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IN THE

District Court of the United States

FOR THE WESTERN DISTRICT OF MISSOURI.
CENTRAL DIVISION.

IN EQUITY.

No. 270

(and other pending cases 270 to 426 excepting those dismissed).

AMERICAN INSURANCE COMPANY, A CORPORATION, PLAINTIFF,

VS.

RAY B. LUCAS (SUCCESSOR IN OFFICE TO R. E. O'MALLEY, SUCCESSOR IN OFFICE TO JOSEPH B. THOMPSON), SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI, AND ROY McKITTRICK (SUCCESSOR IN OFFICE TO STRATTON SHARTEL), ATTORNEY GENERAL OF THE STATE OF MISSOURI, DEFENDANTS.

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IN THE

District Court of the United States

FOR THE WESTERN DISTRICT OF MISSOURI.
CENTRAL DIVISION.

IN EQUITY.

No. 270

(and other pending cases 270 to 426 excepting those dismissed).

AMERICAN INSURANCE COMPANY, A CORPORATION,
PLAINTIFF,

VS.

RAY B. LUCAS (SUCCESSOR IN OFFICE TO R. E. O'MALLEY, SUCCESSOR IN OFFICE TO JOSEPH B. THOMPSON), SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI, AND ROY McKITTRICK (SUCCESSOR IN OFFICE TO STRATTON SHARTEL), ATTORNEY GENERAL OF THE STATE OF MISSOURI, DEFENDANTS.

TRANSCRIPT OF TESTIMONY BEFORE SPECIAL MASTER.

Be It Remembered, that pursuant to an order of the District Court of the United States for the Western District of Missouri, Central Division, made on the 3rd day of July, 1939, at Kansas City, Missouri, appointing the Honorable Paul Barnett as Special Master to take testimony, the above entitled cause came on regularly for hearing before the said Honorable Paul Barnett, Special Master, at ten o'clock a. m. of Thursday, July 27, 1939, in the office of the Western Underwriters Association, 1039 Insurance Exchange Building, in the City of Chicago, County of Cook, and State of Illinois.

The Plaintiffs were represented by Messrs. William Marshall Bullitt of Louisville, Kentucky, and Homer H. Berger, of the firm of Morrison, Nugent, Berger, Byers and Johns, of Kansas City, Missouri, their attorneys.

The Superintendent of the Insurance Department of the State of Missouri was present in person and represented by Judge Charles L. Henson and Messrs. Frank Hollingsworth and Lawrence Holmen.

(The Special Master announced that under the provisions of the order appointing him as said Special Master, he had, on July 11, 1939, appointed Emily F. Miles to report the proceedings had in said matter.)

Whereupon, the following proceedings were had and entered of record:

Mr. Berger: I would like to make a suggestion, when you offer your testimony, that you indicate in which one of the cases it is offered. As I understand it, you are taking hearings in 137 cases simultaneously?

The Special Master: I am going to take it in all the cases. I am only going to hear it in all cases. If there is any evidence that is only applicable to one case, that can later be pointed out.

Mr. Berger: That is what I thought. It should be indicated whether the evidence is being offered in all of the cases or whether it is being offered in an individual case.

Mr. Hollingsworth: I do not think it should be so indicated. We would prefer—

The Special Master: I would prefer that you would offer your testimony in all of the cases, then when you get ready to file your suggestions, you are at liberty to point out that all this evidence would not be applicable to this or that or the other case.

Mr. Berger: Then we would not be in a position to object at such time.

The Special Master: Not at all. You would point it out. It ought not to be any trouble in the world, after the evidence is in, to be able to isolate it if it is isolated.

Mr. Berger: My point is that I did not think all companies should be bound by the testimony of the executive of another company in which they have no connection.

Mr. Bullitt: If they want to offer it they are entitled to offer it.

(Whereupon, discussion was had off the record.)

The Special Master: We do not have time to separate the evidence in advance. We might have several hearings if we did it that way. There will be no trouble in getting up a report and isolating the evidence and making it applicable to the proper case, and every insur-

ance company knows that the evidence offered is going in if it is applicable to any company, and he has a perfect right to claim it is not applicable to him after it gets in, if that is true.

Mr. Berger: That is the way I thought it would be, but I thought it ought to be definitely determined.

The Special Master: We would never get through within the time allotted if it were not handled in that manner.

Defendants' Case.

Whereupon, the defendants, to sustain the issues in their behalf, offered testimony, oral and documentary, and made admissions as follows:

RUSSELL D. HOBBS, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. I wish you would state your name to the stenographer. A. Russell D. Hobbs.

Q.2. Where do you live, Mr. Hobbs? A. Chicago.

Q.3. What is your position with the Subscribers' Actuarial Committee? A. I am secretary.

Q.4. You are secretary at this time? A. Yes, sir.

Q.5. Were you secretary in 1935? A. From September on.

Q.6. From September, 1935, until this time? A. Until this time.

Q.7. Who was your predecessor? A. J. V. Parker.

Q.8. Is he living? A. He is not.

Q.9. Now, I will get you, if you will, to name the members of the Subscribers' Actuarial Committee.

Mr. Berger: You mean at the present time?

Judge Henson: Yes, sir; first, I will ask for the present time.

A. George H. Bell, S. M. Buck, H. A. Clark, J. C. Harding, E. A. Henne, F. W. Koeckert, W. F. Robertson and C. H. Smith.

Q.10. Is W. D. Williams a member? A. Not at the present time. That is the present membership of the committee.

Q.11. Now, will you name the members of the Actuarial Committee during the first six months of the year 1935?

The Special Master: Judge Henson, I do not know whether you have this information in advance. Do you have this information in advance?

Judge Henson: No.

The Special Master: Do you have lists that you could spare?

Mr. Berger: Yes, I gave you that.

A. I can prepare them.

The Special Master: Here is what I have in mind.

Mr. Berger: I gave you a letter from Mr. Henne that gave you a list.

The Special Master: Here is what I have in mind, Judge: When a man gets ready to summarize testimony, when he comes to lists, he just does it like that, and when he comes to this oral testimony from which you can make a list, he has to spend some time on it. If you have those lists and ask him, was that the list, etc., it will just go like that, you see.

Mr. Bullitt: I think they have all of that.

Judge Henson: We have.

The Special Master: That is just a suggestion.

Mr. Bullitt: We gave him a list of all of the executives of every kind, and we have given them everything.

The Special Master: Things that are tabulated, that can be handled very rapidly.

Judge Henson: Then I guess that is what this (indicating) must be.

Q.12. (By Judge Henson) I will show you a paper which I find I have here, and ask you if that is the list of the Subscribers' Actuarial Committee during the first half of the year 1935. A. It is, with the exception of the last three names.

Q.13. The last three names, W. P. Robertson, C. H. Smith and S. M. Buck were not members during the year 1935? A. That is correct.

Q.14. All right.

Mr. Berger: In addition to that, Mr. Street.

Judge Henson: Yes, in addition to that, C. R. Street.

A. Mr. Street's name is on the list.

Mr. Berger: Yes, that is right.

The Special Master: It does not serve his purpose.

Q.15. (By Judge Henson) Who were the officers of this committee in 1935, the first half of the year? Who was chairman? A. The chairman was Mr. C. R. Street. The secretary was Mr. J. V. Parker.

Q.16. How is this committee selected or composed? A. This committee is selected by the subscribers to the rating bureaus.

Q.17. Go right ahead. A. They are elected at the semiannual meetings of the subscribers.

Q.18. By that you mean subscribers of the rating bureau? A. The rating bureau, yes.

Q.19. Well, how are the subscribers of the rating bureau selected and determined? A. They voluntarily, for their own purposes, subscribe to the rating bureau. The subscribers are the insurance companies.

Q.20. By "insurance companies" you mean fire insurance companies? A. Fire insurance companies.

Q.21. Companies doing fire insurance business. Then no one can belong either to the rating bureau or the other unless they are a member of the fire insurance companies? A. Anyone can belong if they need the services of the bureau. If they have use for the services, the bureaus are open to their subscription.

Q.22. It wouldn't be needed by anybody except a fire insurance company, however? A. There are some instances of casualty companies belonging to the bureaus because of the requirements of the statute relating to automobile business.

Q.23. Now, then, getting to the Subscribers' Actuarial Committee in 1935, were there any members of that committee who were not engaged in fire insurance business or connected with fire insurance companies? A. There were not.

The Special Master: Just state what the connection of the various men was.

A. Mr. Street was vice-president of the Great American Insurance Company, Mr. Williams was vice-president of the Security Insurance Company of New Haven. I am not sure whether at that time he was president or not, but he might have been during the latter part of the year. Mr. G. H. Bell was manager of the Western Department of the National Fire Insurance Company. Mr. E. A. Henne was vice-president in charge of the Western Department of the Continental Insurance Company. Mr. F. W. Koeckert was United States manager of the Commercial Union Assurance Company, Ltd. Mr. H. A. Clark was vice-president of the Firemen's Insurance Company of Newark, New Jersey. John C. Harding was vice-president of the Springfield Fire and Marine Insurance Company. Now, these same gentlemen—there

were other companies in these groups. I have given you one company of the group. They held similar positions for other companies.

The Special Master: Anybody in their fleet?

A. In their fleet, yes.

Q.24. (By Judge Henson) What was the object of the Subscribers' Actuarial Committee? What do they do? A. In order to answer that question, I think I will have to give you as briefly as possible the story of the formation of the committee, which will, I think, explain its object more clearly than I can state it any other way.

This committee was formed in 1915 for the purpose of working out the details of changing the term rule. By that I mean the method of writing insurance for more than one year at a reduced multiple of the annual rate. Prior to that time the three year policy was written for two annuals for three years. The standardized term rule which this committee was formed to supervise changed that to two and a half annuals for three years. That upset the rating conditions in most states and required a great deal of study and work to put that into effect so as to be fair to the public and to the companies. In most instances there was a reduction in the annual rate when it was put into effect so that the three year rate would be the same. When the committee started in that work they soon found that the machinery for handling their machinery was cumbersome and unwieldy. There was a committee of managing underwriters for each state to whom the manager of the bureau looked for advice on his problems, and there were fourteen such committees, which meant that this Subscribers' Committee would have to deal with fourteen separate committees to try to get a quorum for meetings, and it was unworkable. The individual state committees were abandoned, and the Subscribers' Committee was given the task, in addition to the term rule, of supervising the activities of the bureaus with particular reference to their administrative problems and their financial problems. There was a feeling that by so doing that the entire operations in which the companies had a common interest could be more economically handled. As that work developed, the committee being the only committee representing the common interests of all companies subscribing to these bureaus, all problems relating to those bureaus were referred to the committee. Until along in 1921 the committee was then

looked upon as the committee to whom the companies would go with their problems affecting the bureaus in any individual state, and the bureau manager would go to the committee. Now, there is no constitution or by-laws or rules governing the duties and obligations of this committee. They are all members of these bureaus themselves and they represent the other companies. Some committee must do that work and this committee through the passage of time has been given more and more work because it represented all interests. Now, does that give you the picture?

Q.25. Yes, I think so. Then by common consent this matter of term rate and fire insurance rates was delegated through the bureau to this actuarial committee? A. That is true.

Q.26. Did this actuarial committee have charge of the Missouri rate litigation that was pending or known as the sixteen and two-thirds per cent increase? A. It did.

Q.27. Did you have meetings regarding that during the pendency of the suits? A. We did.

Q.28. Did you make records of your meetings? A. Yes. These meetings were not held, I think without exception, for that purpose alone, but to consider various matters before the committee, and the secretary has kept a record, largely for his guidance, as to what transpired at those meetings, and what needed to be done, so far as the secretary was concerned, the secretary being the man who handled the detail of the work.

Q.29. Now, having charge of this Missouri rate litigation, did the committee employ counsel for the companies? A. It did.

Q.30. Were these counsel engaged for all of the companies that were engaged in that litigation? A. Yes.

Judge Henson: And if you could furnish me a list of this 137—

Mr. Berger (Interrupting): The 137 companies?

Judge Henson: Yes, if there is some way we can agree on it.

Mr. Berger: That is the current list.

Judge Henson: Well, then, shall we start exhibits? If that is really in the lawsuit, I hate to encumber it.

Q.31. I show you a list of the companies remaining in the Missouri rate litigation in the federal cases at the time the litigation was settled, and ask you if that is a correct list of the companies. A. I don't know.

Mr. Berger: I think we can agree that is the correct list of the pending cases.

Judge Henson: All right. Those are the pending cases, if your admission will go that way.

(Whereupon, discussion was had off the record.)

Mr. Berger: That is a list of the cases that is attached to the order of the Court.

The Special Master: As a matter of law, you are correct. To know what that means, I would have to look up as many appointments as there are, and personally, I don't know.

Judge Henson: Let's just mark this as a convenience.

The Special Master: It is a convenience.

Mr. Berger: That is a copy of the list that was attached to the Court's order appointing you in this case.

The Special Master: I understand, but I haven't that. I only have a printed copy that has no such list attached.

Judge Henson: We will mark it, Your Honor.

(Said list, handed to the reporter, was marked for identification as "Defendants' Exhibit 1, EFM.")

Judge Henson: Now, if I understand you, you agree that Defendants' Exhibit 1 is the list of the—

Mr. Berger: That is a list of the cases.

Judge Henson: The list of the cases involved, naming the companies.

Mr. Berger: This Defendants' Exhibit 1 is a list of the cases that were pending at the time the final decree was entered February 1, 1936. Each company is an individual plaintiff, except as in the case No. 383 where the plaintiffs are the Phoenix Insurance Company, the Minneapolis Fire and Marine Insurance Company and Central States are the three besides the named plaintiff here, the Phoenix Insurance Company.

Judge Henson: I wish to introduce Exhibit 1, with the admission made.

(Which said Defendants' Exhibit 1, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 1.

Court Number		
271	Agricultural Insurance Company	vs. Ray B. Lucas, et al.
273	Aetna Insurance Company	vs. "
274	The Alliance Insurance Company	vs. "
275	American Alliance Insurance Company	vs. "
276	American Central Insurance Company	vs. "
277	American Eagle Fire Insurance Company	vs. "
279	American Union Insurance Company of New York	vs. "
280	Atlas Assurance Company, Ltd.	vs. "
281	Automobile Insurance Company of Hartford, Connecticut	vs. "
282	Bankers and Shippers Insurance Company	vs. "
283	Boston Insurance Company	vs. "
284	British America Assurance Company	vs. "
286	Caledonian Insurance Company	vs. "
288	California Insurance Company	vs. "
289	Camden Fire Insurance Association	vs. "
292	Chicago Fire and Marine Insurance Company	vs. "
293	Citizens Insurance Company	vs. "
294	City of New York Insurance Company	vs. "
295	Columbia Insurance Company (New Jersey)	vs. "
296	Columbia Fire Insurance Company	vs. "

Court Number			
297	Commerce Insurance Company	vs.	Ray B. Lucas, et al.
298	Commercial Union Assurance Company, Ltd.	vs.	"
299	Commercial Union Fire Ins. Co.	vs.	"
301	Concordia Fire Insurance Company of Milwaukee	vs.	"
302	Connecticut Fire Insurance Company	vs.	"
303	Continental Insurance Company	vs.	"
304	County Fire Insurance Company of Philadelphia	vs.	"
305	Detroit Fire and Marine Insurance Company	vs.	"
306	Dubuque Fire and Marine Insurance Company.	vs.	"
307	The Eagle Fire Company of New York	vs.	"
308	Eagle Star and British Dominions Insurance Company	vs.	"
309	East and West Insurance Company	vs.	"
310	Equitable Fire and Marine Insurance Company	vs.	"
312	Federal Union Insurance Company	vs.	"
313	Fidelity Phenix Fire Insurance Company	vs.	"
314	Fire Association of Philadelphia	vs.	"
315	Fireman's Fund Insurance Company	vs.	"
316	Firemen's Insurance Company	vs.	"
317	First American Fire Insurance Company	vs.	"
318	Franklin Fire Insurance Company of Philadelphia	vs.	"

Court Number			
319	Franklin National Insurance Company	vs.	Ray B. Lucas, et al.
320	Girard Fire and Marine Insurance Company	vs.	"
321	Glens Falls Insurance Company	vs.	"
322	Globe and Rutgers Fire Insurance Company	vs.	"
323	Granite State Fire Insurance Company	vs.	"
324	Great American Insurance Company	vs.	"
325	Guaranty Fire Insurance Company of Providence	vs.	"
326	The Hanover Fire Insurance Company	vs.	"
327	Hartford Fire Insurance Company	vs.	"
328	The Home Insurance Company	vs.	"
329	Home Fire and Marine Insurance Company	vs.	"
330	Hudson Insurance Company	vs.	"
331	Imperial Assurance Company	vs.	"
332	Importers and Exporters Insurance Company	vs.	"
334	Insurance Company of North America	vs.	"
335	Insurance Company of the State of Pennsylvania	vs.	"
336	The Law Union and Rock Insurance Company, Ltd.	vs.	"
338	Liverpool and London and Globe Insurance Company, Ltd.	vs.	"
339	The London Assurance Corporation	vs.	"
340	London and Lancashire Insurance Company, Ltd.	vs.	"

Court Number			
341	London and Provincial Marine and General Ins. Co. Ltd.	vs.	Ray B. Lucas, et al.
342	London and Scottish Assurance Corporation, Ltd.	vs.	"
343	Lumbermen's Insurance Company	vs.	"
344	Manhattan Fire and Marine Insurance Company	vs.	"
345	Massachusetts Fire and Marine Insurance Company	vs.	"
346	Mechanics Insurance Company of Philadelphia	vs.	"
347	Merchants Insurance Company	vs.	"
348	Merchants Fire Assurance Corporation of New York	vs.	"
349	Merchants Fire Insurance Company	vs.	"
350	Mercury Insurance Company	vs.	"
351	Michigan Fire and Marine Insurance Company	vs.	"
352	Milwaukee Mechanics Insurance Company	vs.	"
354	National Ben Franklin Fire Insurance Company	vs.	"
355	National Fire Insurance Company of Hartford	vs.	"
356	National Liberty Insurance Company of America	vs.	"
357	National Reserve Insurance Company	vs.	"
358	National Security Fire Insurance Company	vs.	"
359	National Union Fire Insurance Company	vs.	"
361	The Newark Fire Insurance Company	vs.	"
362	New England Fire Insurance Company	vs.	"

Court Number		
363	New Hampshire Fire Insurance Company	vs. Ray B. Lucas, et al.
364	New Jersey Insurance Company	vs. "
366	New York Underwriters Insurance Company	vs. "
367	Niagara Fire Insurance Company	vs. "
369	The Northern Assurance Company, Ltd.	vs. "
370	Northern Insurance Company	vs. "
371	North River Insurance Company	vs. "
372	Northwestern Fire and Marine Insurance Company	vs. "
374	Norwich Union Fire Insurance Society, Ltd.	vs. "
375	Old Colony Insurance Company	vs. "
376	Orient Insurance Company	vs. "
377	Pacific Fire Insurance Company	vs. "
378	Palatine Insurance Company, Ltd.	vs. "
379	Patriotic Insurance Company of America	vs. "
381	Philadelphia Fire and Marine Insurance Company	vs. "
382	Phoenix Assurance Company, Ltd.	vs. "
383	The Phoenix Insurance Company, et al	vs. "
383	Presidential Fire and Marine Insurance Company	vs. "
386	Providence Washington Insurance Company	vs. "
387	Provident Fire Insurance Company	vs. "
389	Queen Insurance Company of America	vs. "

Court Number			
390	Reliance Insurance Company of Philadelphia	vs.	Ray B. Lucas, et al.
391	Rhode Island Insurance Company	vs.	"
392	Royal Exchange Assurance	vs.	"
393	Royal Insurance Company, Ltd.	vs.	"
394	Safeguard Insurance Company	vs.	"
395	St. Paul Fire and Marine Insurance Company	vs.	"
396	Scottish Union and National Insurance Company	vs.	"
397	Security Insurance Company of New Haven	vs.	"
398	Sentinel Fire Insurance Company	vs.	"
399	Springfield Fire and Marine Insurance Company	vs.	"
400	Standard Fire Insurance Company of Connecticut	vs.	"
401	Standard Fire Insurance Company of New Jersey	vs.	"
402	Star Insurance Company of America	vs.	"
403	The State Assurance Company, Ltd.	vs.	"
404	Stuyvesant Insurance Company	vs.	"
405	Sun Insurance Office, Ltd.	vs.	"
406	Superior Fire Insurance Company	vs.	"
407	Svea Fire and Life Insurance Company	vs.	"
408	Tokio Marine and Fire Insurance Company, Ltd.	vs.	"
409	Transcontinental Insurance Company	vs.	"
410	The Travelers Fire Insurance Co.	vs.	"

Court Number		
411	Twin City Fire Insurance Company	vs. Ray B. Lucas, et al.
412	Union Assurance Society, Ltd.	vs. "
413	Union Fire Insurance Company	vs. "
414	United Firemen's Insurance Company of Philadelphia	vs "
415	United States Fire Insurance Co.	vs. "
416	United States Merchants and Shippers Insurance Company	vs. "
418	Victory Insurance Company	vs. "
419	Westchester Fire Insurance Company	vs. "
420	Western Assurance Company	vs. "
422	The World Fire and Marine Insurance Company	vs. "
423	Yorkshire Insurance Company, Ltd.	vs. "
425	Mechanics and Traders Company	vs. "
426	Potomac Insurance Company of the District of Columbia"	vs. "

Q.32. (By Judge Henson) Who were the lawyers engaged for the companies for this Missouri rate litigation? A. At what time?

Q.33. At the time of its inception when the companies entered their individual suits in federal court. A. Mr. R. J. Folonie. I am not sure whether it was Mr. Homer Berger or Mr. Morrison, but it was one or the other or both.

Q.34. All right. Now, you are aware of the fact that that litigation was settled? A. I am.

Q.35. When did you get word that it was settled with reference to the time it was supposed to have been settled? A. I don't know the dates at all when the

settlement agreement was signed. It is my recollection that advices were sent to all interested companies of that fact either through the secretary's office or through the Missouri Inspection Bureau.

Q.36. Well, as a matter of fact, this information of the settlement was sent to all of the companies? A. That is my recollection.

Q.37. Including the companies that are engaged here? A. I don't remember the date.

Q.38. Now, how soon, apparently, after it was settled, did you learn of it? A. Well, it was undoubtedly very shortly after it was signed.

Q.39. You were a member of the committee in 1935, weren't you? A. I was not.

Q.40. Did you have any connection at all with the committee? A. Yes, I was Mr. Parker's assistant and had been his assistant and had worked very closely with him on all these matters during all of this time.

Q.41. Which member of the Actuarial Committee did most of the work and most of the supervision of that litigation? A. Mr. Street.

Q.42. By that you mean Mr. C. R. Street? A. Mr. C. R. Street.

Q.43. Do you know of any activity of any other members than Mr. Street in that litigation? A. No other than the fact that periodically Mr. Street made a rather brief summary of what was going on, based on the reports he had received from the attorneys from time to time.

Q.44. Now, did he make those reports in writing? A. No.

Q.45. When the settlement came up and it was reported to the committee, was any record made in the committee's minutes about the settlement of this Missouri case? A. There was not.

Q.46. A few months later the federal court entered a decree distributing the money. You are familiar, of course, with the terms of that decree? A. Yes.

Q.47. Was that information promptly given to the companies? A. It was.

Q.48. And by "the companies" you mean the plaintiff companies in this litigation here? A. Yes.

Q.49. Did Mr. Street report to that committee that he had early in May, 1935, gathered up $100,500.00 from some fourteen companies to use in accomplishing this settlement? A. He did not.

Q.50. Did he make any such report to the committee? A. He did not.

Q.51. He didn't tell you anything about it? A. He did not.

Q.52. Did your committee receive that $100,500.00? A. It did not.

Q.53. Now, in the distribution shortly after the court decree—that would be March and in April, 1936—did Mr. Street report to your committee that he had collected $330,000.00 or upwards? A. He did not.

Q.54. 5 per cent from each of the companies? A. He did not.

Q.55. Did you know that 5 per cent of the impounded funds of all these companies was paid to Mr. Street? A. No, I did not. I received a telephone call sometime about that time from one company—I don't remember the name of the company now—stating that they had a request from Mr. Street for the payment of a check for expenses in connection with the litigation, and asked me if I could explain it to them, and I told them it was the first I had heard of it and that if they wanted any information about it they could go to Mr. Street. If he had requested it, he could undoubtedly explain all of the details. Now, there may have been one other company inquired, but other than that, that is the only knowledge I had of the fact that any money had been requested by Mr. Street from the companies.

Q.56. These inquiries from companies to you, were those who couldn't understand why they were receiving 11 per cent of their impoundments back and asking a return of 5 per cent?

Mr. Bullitt: Wait a minute. Mr. Commissioner, Mr. Henson is assuming all sorts of facts in his questions.

The Special Master: I know that.

Mr. Bullitt: And I think he should ask just what happened, but I do not think we ought to have this record show all kinds of assumptions stated in his questions. He can just tell. I do not want to make any technical objections but he ought to say what happened.

The Special Master: That would be very, very serious and very, very damaging if we had a jury, but I quite clearly understand that he has not proved it or even attempted to prove it.

Mr. Bullitt: I do not want to keep interrupting.

The Special Master: For fear I might have to lay a foundation in New York to come back, I will let you—

Mr. Bullitt (Interrupting): I wish he would just ask what happened and we will give him every fact and every document and everything in the world, but he ought not to put into his questions assumptions.

The Special Master: That is perfectly true, but I do not think you need to worry that I am misled to think that has any tendency to prove the things.

Judge Henson: I do not even fancy that the Court here would be deceived by it. If it was before a jury—

Mr. Bullitt (Interrupting): But you are too old a practitioner not to know better.

Q.57. (By Judge Henson) Now, Mr. Hobbs, then the first time that you knew anything about any 5 per cent being collected back from the insurance companies was when at least two insurance companies phoned to you something about it? A. They phoned me.

Q.58. Yes, sir. You don't have any letters from them that you can produce? A. I have none.

Q.59. Then you heard from them before you got the information from Mr. Street? A. I never got the information from Mr. Street.

Q.60. Never did get the information from Mr. Street? A. I never did get it.

Q.61. Did you make inquiry of Mr. Street then after you had these conversations? A. I did not.

Q.62. Why didn't you do that? A. Did you know Mr. Street?

Q.63. No, I didn't know him. A. Well, in my capacity as secretary or as assistant or in my capacity as Mr. Parker's assistant, I was not in the habit of asking Mr. Street questions. Mr. Street told me what he wanted me to know, and he was the type of man that you were not inclined to ever give him the chance to tell you that that was his business. I had known Mr. Street for a good many years and had worked with him a good many years and I let Mr. Street tell me what he felt I should know on any problem that came up.

Q.64. Do you know any member of the Actuarial Committee to whom Mr. Street gave the information that he was collecting this 5 per cent from the companies? A. I do not.

Q.65. Has any member of the committee told you that he was advised of that? If so, give us the names. A. I have, in company with Mr. Berger in the last week, discussed some of these problems with some of the

gentlemen who have been called upon to come here, and that is the only conversation I have ever had with any of them regarding this 5 per cent.

Q.66. Now, when you got this information that they were collecting this 5 per cent, you say you knew better than to ask Mr. Street anything about it? A. Well, I wouldn't say that I knew better. I just simply said that I wouldn't inquire.

Q.67. All right, I am not trying to take undue time on that. Tell me if you told any other member of the Actuarial Committee what you had just learned? A. I did not.

Q.68. Then you never discussed with any member of the Actuarial Committee anything about this 5 per cent? A. Or anyone else.

Q.69. Was any sum of that money, that 5 per cent, collected by Mr. Street, reported to the Actuarial Committee and a record made? A. It was not.

Q.70. Did the Actuarial Committee itself get any of that money so far as you know or the records show? A. It did not.

Q.71. The employment of the lawyers, was that by contract or letter or anything in writing—I mean by that the lawyers who were to represent the companies in bringing these suits? A. So far as my knowledge goes, there was no contract or no letter. It was verbal. Mr Folonie had represented the companies; I think his practice was very largely in connection with fire insurance companies for a number of years, and it is customary in questions of that kind to discuss the problem and tell Mr. Folonie or whoever the attorney would be to handle the situation.

Q.72. Did Mr. Folonie or Mr. Berger or Mr. Morrison make any demand upon your committee for fees anywhere in the early days or the first half of the month of May, 1935, and before the compromise is alleged to have been signed? A. I would say no. I am quite sure of that statement.

Q.73. You haven't any such demand in your records, at least? A. No.

Q.74. Now, let's see, you have the records there, haven't you? A. Yes, sir.

Judge Henson: I just want to save time, and wonder if he and I can not go outside and look at the records while the next witness is being examined here.

The Special Master: If who can?

Judge Henson: If the witness and I might do that.

The Special Master: What records are you talking about?

Judge Henson: I want to see what records have been made by the Actuarial Committee, the minutes and things of that kind, and run them over outside without delaying the Court.

The Special Master: To find out if there is any that ought to be in evidence?

Judge Henson: Yes, sir. Senator Hollingsworth will take the next witness.

The Special Master: Let the record show that the witness now offers to Judge Henson an inspection of the records of the Subscribers' Actuarial Committee, and that the two are to examine the same during the examination of the next witness.

(Witness withdrawn.)

ERNEST A. HENNE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Please state your name. A. Ernest A. Henne.

Q.2. You reside here in the City of Chicago? A. Evanston is my home.

The Special Master: That is just a suburb of Chicago?

A. A suburb of Chicago, yes, sir.

Q.3. (By Senator Hollingsworth) What is your connection with the Subscribers' Actuarial Committee, Mr. Henne? A. At present I am the chairman.

Q.4. And you succeeded Mr. Street? A. Yes, sir.

Q.5. When did you become chairman? A. I think it was December of 1936.

Q.6. Prior to that time you were a member? A. Yes, sir.

Q.7. Were you active in the affairs of the Actuarial Committee from 1935 down until you became chairman? A. Yes, sir.

Q.8. You attended the meetings regularly, did you? A. Yes, sir.

Q.9. Now, at the time this sixteen and two-thirds per cent rate litigation developed, it was placed in the charge of the Actuarial Committee? A. Yes, sir, it was in its charge.

Q.10. And the first thing that the Actuarial Committee did was to employ attorneys? A. Yes, sir. However that was before my time on the committee. I have been on the committee since 1932.

Q.11. When you came into the picture the attorneys had been employed? A. Yes, sir.

Q.12. Did you learn anything about the obligation of the committee to these attorneys as to the method of payment, etc.? A. No obligation other than from time to time we paid their bills as they were presented, their fees.

Q.13. Were there bills presented to the committee at the time payments were made to them? A. Yes.

Q.14. That was by way of a statement of account for services rendered? A. Yes, sir.

Q.15. Then those bills were submitted to the committee and by the committee approved and disbursements of the fees ordered in accordance therewith? A. Yes, sir.

Q.16. The attorneys for the companies were the firm of Hicks and Folonie and the Kansas City firm of Morrison, Nugent, Wylder and Berger? A. Yes, sir.

Q.17. From the inception of the litigation, how much attorneys' fees, if you recall, were paid to the various firms? A. Well, I would have to rely on the records to show that. I couldn't tell you.

Q.18. Can you approximate the amount for the purpose of further examination? A. I would rather depend on the record on that.

Q.19. I see, but the records of the Actuarial Committee will show? A. Right.

Q.20. Now, the funds that are provided for the Actuarial Committee are provided in what manner? A. They are levied on the subscribers to the bureaus on the basis of the volume of premiums that they write.

Q.21. And then through the bureaus that is prorated back to the respective companies involved in this litigation? A. I don't quite—

Mr. Bullitt (Interrupting): That is again what I meant, about those things. If he will ask what was done—

The Special Master: All right.

Mr. Bullitt: We will agree to it.

The Special Master: Yes, sustained.

Mr. Bullitt: I do not want to object continually, but I do not want things—

The Special Master: All right, sustained.

Mr. Bullitt: We will give him every fact in the world, but don't put into the question an assumption of what happened.

Senator Hollingsworth: I merely asked if that did happen.

Mr. Bullitt: We will tell you anything in the world.

The Special Master: I already know how it happened, but it is not in this record.

Q.22. (By Senator Hollingsworth) Are the fees that come into the committee for the purpose of paying its expenses, etc., paid directly by the companies or are they paid by the rating bureau? A. The fees—the assessments are levied by the various rating bureaus in the different states for their particular expenses in that state and paid direct to that rating bureau. That is the case in Missouri and every other state over which the Subscribers' Actuarial Committee has supervision.

The Special Master: Pardon me just a minute. It may shorten it up. Is this approximately what happened: This Actuarial Bureau authorized the payment of bills arising out of this litigation; they certified that to the rating bureau; the rating bureau then to raise that money made assessments accordingly, and it was paid the same as any other assessment for the support of that bureau?

Mr. Berger: You mean the Missouri Inspection Bureau?

A. Yes.

The Special Master: Isn't that what happened?

A. That is right.

Senator Hollingsworth: That is what I wanted to get at.

The Special Master: I think I already know. It will save a lot of time.

Mr. Bullitt: If you will just ask the witness what happened, he will tell you.

The Special Master: We can even do it shorter if I can state how it happened, and I think I know.

Mr. Bullitt: That is the way the Master was paid in the sixteen and two-thirds per cent litigation.

The Special Master: Oh, I took a great deal of interest to find out how the machinery operated.

Q.23. (By Senator Hollingsworth) Now, at the time these assessments were made for the purpose of the payment of attorneys' fees, were—

Mr. Bullitt: I object, your Honor please. I object to that on the same ground. He says "at the time these assessments were made for the payment of attorneys' fees." There is an assumption that they did that. He has never said they did that.

The Special Master: No, I know. The statement that you both agreed to is inconsistent with that. But they do this: They did approve attorneys' fees, which were included in the bills that they asked be allowed and that were certified to the rating bureau, and the rating bureau did make an assessment.

Mr. Bullitt: A general assessment.

The Special Master: Big enough to include the payment of those bills.

Mr. Berger: They made one assessment for all their operations.

A. I just wanted to say that in every way we anticipate our expenses and make an assessment accordingly.

Mr. Bullitt: If you will just ask Mr. Henne he will give you every fact in the world, but don't put in things—

The Special Master: The difficulty, Mr. Hollingsworth, is this: The rating bureau did not handle any money at all as such; it did not make any assessments.

Mr. Berger: You mean the committee?

The Special Master: I mean the Actuarial Committee did not handle any money at all and it did not even make any assessments, but it did approve bills and turn it over to a rating bureau that did make assessments and that did raise moneys from the companies.

Mr. Berger: The assessments were made about once a year.

A. The committee acts in an advisory capacity only.

Q.24. (By Senator Hollingsworth) The checks that were paid to the attorneys came from whom? A. I couldn't tell you that because other than voting the approval of the bill, that is as far as I went.

Q.25. You don't know the source of the checks that paid the attorneys? A. I would say that they came from the Missouri Inspection Bureau.

Q.26. Now, in 1935 I believe you were connected with the Continental Fire Insurance Company? A. Yes, sir.

Q.27. In what capacity? A. As vice-president.

Q.28. When, if ever, did you first hear of a proposal of compromise of this litigation? A. Well, Mr. Street brought that up at one of our meetings.

Q.29. Whose meetings, now? A. Our Subscribers' Committee meetings. I couldn't identify the date other than at more than one meeting a suggestion was made that there was considerable pressure being brought from various interests.

Q.30. What interests did he say? A. Local agents in Missouri, chambers of commerce and finally when it reached the point that it seemed that a possibility of a settlement could be reached, the committee authorized Mr. Street to proceed.

Q.31. Well, what did he tell you about anyone having approached him in regard to a settlement? A. Well, local agents and correspondence from chambers of commerce, as I recall.

Q.32. You said "when it appeared that a settlement might be made." What was brought to your attention about the possibility of a settlement? A. This pressure and correspondence and chambers of commerce urging a settlement.

Q.33. Did Mr. Street say anything to you about any negotiations with the other side or anyone else? A. No, he did not.

Q.34. When did you learn of the first negotiations? A. After they were completed.

Q.35. After they were completed? A. Yes.

Q.36. And approximately when was that? A. Well, it was in '35. I think the possibility of the settlement being concluded I think was along about February of 1935 that I first heard of it.

Q.37. Well, at that time had an agreement been reached? A. I don't know.

Q.38. When did you learn of it in 1935 that negotiations were pending? A. Let me understand.

Q.39. In 1935.

Mr. Bullitt: When did he learn what?

Senator Hollingsworth: About the negotiations. Were they still pending or had they been completed when you first learned of it?

A. Well, I can't tell you that positively. Mr. Street discussed this verbally with the Committee and that is all there is to it.

Q.40. What did he say to the committee? A. That he was negotiating.

Q.41. Did he say with whom he was negotiating? A. No, he didn't tell me.

Q.42. Did he discuss with you the terms? A. No.

Q.43. That was not mentioned? A. No.

Q.44. He said that a settlement was pending? A. Yes.

Q.45. Then you waited until the settlement had been accomplished before you learned anything about the contents of it? A. About the contents, yes, its provisions.

Q.46. It was then accomplished, insofar as the parties were concerned? A. Yes, sir.

Q.47. You had no knowledge whatever as to the terms or conversations prior to its accomplishment? A. No, sir.

Q.48. Now, at any of these committee meetings which were held during the time of the negotiations, did Mr. Street reveal to you any of the proposed terms? A. No.

Q.49. As I understand you, he simply told the committee that negotiations were pending? A. Yes.

Q.50. And no member of the committee, as far as you knew, had any information as to the distribution of the impounded funds until it was an accomplished fact? A. As far as I know, no.

Q.51. And had any funds been called for by Mr. Street for the purpose of effecting or bringing about the compromise or settlement before it was an accomplished fact? A. No, sir, not that I know of.

Q.52. Not that you know of? A. No.

Q.53. After it was an accomplished fact, did Mr. Street make any call on the committee for funds or ask the committee to approve any bill for funds? A. Only current bills that were submitted.

Q.54. Now, that was current bills in connection with the general routine of the committee? A. Yes.

Q.55. There were no special funds called for? A. No, sir.

Q.56. And do you recall the date that the compromise was effected?

Mr. Berger: It was dated May 18th.

Q.57. (By Senator Hollingsworth) You recall that May 18, 19— A. (Interrupting) It was in May that the final settlement was approved.

Q.58. The compromise was dated May 18, 1935? A. Yes.

Q.59. Now, prior to the time it was signed, did you know anything about the terms or provisions of it? A. Not a word.

Q.60. Now, after it was signed, did Mr. Street call on the committee for any expenses in connection with the compromise? A. No.

Q.61. Did Mr. Street at any time before the compromise was effected discuss with you as an official of your insurance company, the Continental, the settlement or proposed settlement of this case? A. No.

Q.62. Did he afterwards? A. No.

Q.63. Did any other person? A. No.

Q.64. And to this day all you know about it is what you saw in the written document? A. Right.

Q.65. Did Mr. Street call on your company either before or after the compromise settlement for the payment of any funds in connection with it in any manner? A. I understand he called on the New York office for funds.

Q.66. How do you understand that? A. Well, rather I might make a positive statement that he did, because subsequently we received advices to reimburse the New York office for a specified amount of money that was advanced to Mr. Street for legal expenses.

Q.67. At the time the settlement was made, you knew that 30 per cent of this impounded fund had been allocated for the payment of the expenses of the companies' attorneys, did you not?

Mr. Bullitt: Just a minute there. I object to that because he says at the time the settlement was made. He does not say whether he is referring to May 18, 1935, when the agreement was signed, or whether he is talking about February 1, 1936, when this decree was entered. The question is so unintelligible. Further, he is assuming facts. If you will say what the facts—

Senator Hollingsworth: I prefer—

Mr. Bullitt (Interrupting): Just say—

Senator Hollingsworth: Make your objection to the Master.

Q.68. (By Senator Hollingsworth) Did you on May 18, 1935, or thereabouts, know that some 30 per cent of these impounded premiums had been allocated for the purpose of payment of attorneys' fees? A. I knew it when I got advices to that effect, that that was the settlement made.

Q.69. That was shortly after it was made, was it? A. I would take it, it was. I couldn't recall the date, but it would be shortly afterwards.

The Special Master: What was it he said he knew? I was making a note.

(Question and answer read.)

Mr. Bullitt: If your Honor please, there again the question assumes that 30 per cent was allocated for attorneys' fees, when the writing shows it was allocated for a great many other things. The writing is here.

The Special Master: I was getting to that myself. Of course, we can go at it by sustaining an objection to every question that comes up that assumes a fact, that it is leading.

Mr. Bullitt: I do not want to be objecting.

The Special Master: That is the conventional way, but maybe we can do it quicker than that. Mr. Hollingsworth, I am not familiar with the terms of the settlement. I have never seen it and never had any occasion to know anything about it. If it were in evidence and I could have it before me, I could follow you much easier.

Mr. Bullitt: Put it in, Mr. Hollingsworth.

Senator Hollingsworth: If I have a copy here available, I will.

(Whereupon, discussion was had off the record.)

(A copy of compromise settlement, handed to the reporter, was marked for identification as "Defendants' Exhibit 2, EFM.")

Senator Hollingsworth: May it be agreed that Defendants' Exhibit 2 is a true and exact copy of the compromise settlement as made under date of May 18, 1935?

Mr. Bullitt: Exactly.

Senator Hollingsworth: We now offer it in evidence.

The Special Master: All right. Now, I am going to ask you to hold up a minute. I want to look it over.

(Which said Defendants' Exhibit 2, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 2.

Memorandum of Agreement Made this 18th day of May, A. D. 1935, between R. Emmet O'Malley, Superintendent of the Insurance Department of the State of Missouri, and Charles R. Street, as Agent for the stock fire insurance companies parties to rate litigation in the United States District Court for the Western District of Missouri and in the Circuit Court of Cole County, Missouri.

Witnesseth:

That Whereas such insurance companies have brought suits for review and for injunction directed against the order of the Superintendent of Insurance of Missouri of date May 28, 1930, purporting to disapprove filing of increase of December 30, 1929; and

Whereas, it is the mutual desire of the parties to settle such controversies, and it is mutually recognized that the insurance experience in Missouri justifies an order which the Superintendent, after investigation, has determined he should justly make respecting just rate levels:

Now It Is Mutually Agreed that the Superintendent of Insurance will make an order setting aside such order of May 28, 1930, and will make a new order retrospective to June 1, 1930, approving four-fifths of the increase of fire rates and four-fifths of the increase of windstorm rates proposed by such filing of December 30, 1929 (therein styled 16-2/3% increase on such classes), and disapprove such proposed increase to the extent of one-fifth thereof on each of such classes; that the parties will by their attorneys appear in both the United States Court and in the Circuit Court of Cole County and join in seeking appropriate orders from such courts for distribution of impounded money now impounded or hereafter to be impounded to effect the return to policyholders of one-fifth thereof and if the said courts approve such course of action that such distribution be made under the direction of the Superintendent of Insurance and the Custodians of said funds be empowered to deliver their records and turn over to the Superintendent twenty per cent of the moneys with them impounded covering writings to December 31, 1934, and that if any portion thereof remain after the Superintendent shall have diligently undertaken to return the same to policyholders that the insurance companies waive any claim to any remaining remnant of such one-fifth; that one-half of the whole fund impounded upon writings to December 31, 1934, shall be, as soon as conveniently may, restored by the Custodian of said funds to the insurance companies or lawful representatives of them who have impounded and deposited the same; that the remainder of the principal of the funds upon writings to December 31, 1934, shall be delivered to Robert J. Folonie, Counsel for plaintiffs in said suits, and Charles R. Street, Chairman of the Committee of the companies supervising such matter on be-

half of the companies, as a payment and discharge to that extent of any obligation of return thereof to the insurance companies, it being the intent of the parties that said Trustees so receiving said sum as representatives of the companies will discharge various items of disbursements hereinafter more specifically mentioned and make such other disbursements as may be proper and appropriate in their relation to such insurance companies and account to such companies for the same with no obligation on the said Superintendent, however, to see to the application thereof. The companies will discharge all lawful claims of agents for commissions.

The Trustees, after becoming invested with such funds, will pay to the Superintendent $200,000 as a reimbursement to the Superintendent for outlays and costs incidental to such rate litigation without any obligation of the Superintendent to account to or refund any part thereof to the insurance companies.

The Trustees will further, out of said sum, when reduced to possession, pay to the record attorneys for the Superintendent of Insurance, namely, John T. Barker, Bowersock, Fizzell & Rhodes, Floyd E. Jacobs, G. C. Weatherby and Ira H. Lohman, the sum of $500,000, for their final fees and expenses for legal services rendered; such payment to be made to John T. Barker, one of the counsel for the Superintendent of Insurance, upon his producing and furnishing appropriate releases, receipts and evidence of discharge of claims of himself, and the other named counsel in such 16-2/3% rate litigation, while representing the Superintendent of Insurance now, or in the past, and by furnishing releases of all lien claims now on file in said respective courts by certain of such counsel duplicate receipts shall also be furnished to the Superintendent as evidence of complete discharge of the claims of all of such counsel as aforesaid, for fees and expenses.

Neither of the parties to this Agreement will assert or make any claim against the other on account of any expenditure, cost, fees or liabilities for which they have respectively made payment or are respectively obligated.

The insurance companies will file amendments or supplements to their bills of complaint or petitions setting forth the order of the Superintendent as herein contemplated, or take the appropriate means to present to the courts in which proceedings are pending this Agreement to settle the case upon payment of 20% to policy-

holders and the Superintendent will cause answer to be filed thereto or otherwise appropriately confess the same and consent to decrees for distribution of impounded moneys as herein indicated and confirming the agreement as to return and distribution of moneys as herein recited, and the parties will mutually undertake to join in seeking orders or decrees confirming their agreement. As incident to such disposition of such cases, the parties will join in undertaking to discharge obligations of insurance companies upon the various bonds in the suits so recited. Further impoundings are contemplated to cover insurance writings in January, February, March and April, 1935, and the Custodians of such respective courts may temporarily retain any interest in their hands and impounded principal covering business for such four months until the Court shall find that proper charges of Custodians have been cared for and accounts appropriately settled, after which it is contemplated that distribution of 20% of the principal amount impounded shall be paid to the Superintendent for policyholders and fifty per cent transmitted to insurance companies, and the remainder, principal and interest, delivered to such Trustees named.

After the Superintendent has made his order setting aside order of May 28, 1930, as indicated, and the order to be made has been approved by the Courts, the insurance companies will, through Missouri Inspection Bureau, file rates as printed at present, by which is meant the rates as now printed (such *printed rates* do not give effect either to 10% reduction as made by filing of August 8, 1929, or to the 16-2/3% increase filed December 30, 1929), which printed rates will be filed retroactive to May 1, 1935, and which, in a practical way, produces a substantial conformity to such order, and as of May 1, 1935, will be treated as a practical acceptance and conformity to the order of the Superintendent. The companies are to make their impoundings at the next impounding date, June 15th, or such other date as the Court may fix, to cover four (4) months of 1935; namely, January, February, March and April. If the courts shall not approve this Agreement as to collateral matters, as, if they should decline to accomplish return of moneys to policyholders through the Superintendent, or decline to accomplish return of part of funds to the companies through Trustees, the Agreement shall nevertheless be carried out if approval of the general plan hereof is confirmed.

After approval of courts is had, the companies, through Missouri Inspection Bureau and after filing of printed rates, will file basis schedules on various classes, as already submitted to the Superintendent, which when applied and in conjunction with other basis schedules as printed will produce a rate level not to exceed 97.6 per cent of printed rates.

Dated at Jefferson City, May 18th, 1935.

C. R. Street,
Agent for stock fire insurance companies parties to rate litigation.

R. Emmet O'Malley,
Superintendent of Insurance.

ROBERT J. FOLONIE,
Attorney for Insurance Companies.

JOHN T. BARKER,
Attorney for Superintendent."

The Special Master: Mr. Hollingsworth what 20 per cent are you talking about? I read it hastily, but tell me what you mean. Just read first what you have in mind. I read it very hastily and I probably overlooked it. Do you refer to the 30 per cent of all of the funds left after 50 per cent went to the companies absolutely and 20 per cent went to the policyholders?

Senator Hollingsworth: Yes, sir.

The Special Master: Everything left?

Senator Hollingsworth: That was after payment of the expenses of the companies, as I understand it.

Mr. Bullitt: The question that I objected to your question asked him about 30 per cent that was allocated for the payment of attorneys' fees, and the only attorneys you ever talked about were Hicks and Folonie and Berger, and that is a completely erroneous assumption of facts that is perfectly plain on its face.

The Special Master: It is now in evidence that there was 30 per cent which did not go to the companies as their money, as their part of the premiums?

Senator Hollingsworth: That is right.

The Special Master: And the 20 per cent that went to the policyholders as their part of the premiums, there was 30 per cent left, but the purpose for which it is left

is designated by the copy of the contract of settlement that you have just put in evidence.

Mr. Bullitt: That was finally allocated in the February decree specifically.

Senator Hollingsworth: That is in evidence, I think.

The Special Master: Yes.

A. Do I understand that that is the answer to my question?

The Special Master: Yes. It will not make any difference what you said about it. It will still be the way it is.

(Copy of decree, handed to the reporter, was marked for identification as "Defendants' Exhibit 3, EFM.")

Senator Hollingsworth: Now, Mr. Berger, is it understood that that Defendants' Exhibit 3, which I now offer in evidence, is an exact copy of the decree that was rendered in the federal court on the first day of February, 1936, based upon the compromise agreement of May 18, 1935?

Mr. Berger: I do not know whether the Court based it upon that compromise agreement or not, but that is a copy—

The Special Master: Of the decree entered by the federal court in this case as of the date recited?

Mr. Berger: The identical decree entered in each one of the 137 cases.

The Special Master: I know that is the way it was done. It was all separate. You see, I know a lot about this case, but nothing at all about this decree.

Mr. Bullitt: Of course, the decree had the changes.

The Special Master: We will say it was.

Senator Hollingsworth: Now, I call the Master's attention to paragraph 2, which, I think, specifically provides—

The Special Master: We will see what it provides.

(Which said Defendants' Exhibit 3, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 3.

DECREE.

This cause coming on to be heard upon the verified motion of plaintiff for a decree, and stipulation executed

by counsel for plaintiff and defendants herein, and the Court having considered the said verified motion and the said stipulation, and upon evidence heard in open court, and it appearing to the court that no policyholder contributing to funds deposited by the above plaintiff under order of this Court for impounding of funds has intervened in this cause as permitted by order of this Court on November 13, 1935, it is Ordered, Adjudged and Decreed that:

1. The controversy herein having been settled and disposed of by the parties and no controversy between the parties remaining, this cause is hereby dismissed.

2. The court does direct W. T. Kemper, heretofore appointed Custodian of the said funds, to distribute the said impounded funds in his custody as follows:

A. As respects funds reported and impounded by plaintiff upon policies effective prior to May 1, 1935, he is directed to refund to (pay to) the assured (policyholders), in the manner hereinafter provided, one fifth (1/5th) of all net amounts so impounded. As respects funds reported and impounded by plaintiff upon policies effective after April 30, 1935, he is directed to refund to (pay to) the assured, in the manner hereinafter provided, one-third (1/3rd) of all net amounts so impounded. Such payments shall be made to the respective assured on the prorate basis of the net amounts impounded on their respective policies.

Aa. The Custodian shall additionally pay to the assured, assured's proportion of the net interest and accretions from impounded funds as same exists at the date of this Decree, such proportion to be ascertained and determined as hereinafter in this sub-cause Aa provided. The amount assignable to case of plaintiff shall be an amount bearing the same ratio to the total amount of net interest and accretions as the total net amount of funds impounded by this plaintiff bears to the whole net sum impounded by this plaintiff and all of the other contributing companies to the funds impounded with the Custodian (such other contributing companies being plaintiffs in companion cases in which decrees identical with this Decree are being entered concurrently with the entry of this Decree, including those companies mentioned in paragraph 9 hereof). This amount so found properly assignable to plaintiff's case shall be allocated to all assured of this plaintiff to the extent and in the same proportion

as the impounded fund is allocated to them in sub-paragraph A above. For the purpose of distribution to assured this sum so allocated to all assured of plaintiff shall be divided into 276 moieties, whereof 23 moieties shall be allocated to policies appearing on the report for the first impounding period, and 22 moieties to policies reported on the report for the second impounding period, and so progressively one moiety less for policies reported for each successive impounding period. The fund so allocated to any impounding period shall be prorated among the several policies appearing on the report of this plaintiff for such impounding period by finding the ratio existing between the amount of the fund so allocated to such impounding period, and such portion of the total funds impounded by this plaintiff for such impounding period as shall be allocated to the assured according to the provisions of subparagraph A above, and by applying such ratio to the amount to be refunded to the assured (as provided in subparagraph A above) out of the total premiums impounded for such period in respect to each such policy. The foregoing provisions as to distribution of interest and accretions to assured is upon the assumption that the plaintiff has made 23 impounding reports; and if the plaintiff has made less than 23 impounding reports, the Custodian shall make the distribution in a similar manner and upon a similar basis.

In determining net earnings and accretions for purposes of this paragraph the Custodian shall take into consideration as of the date of this Decree: Bank deposits and accrued interest, market value of securities at closing price on New York Stock Exchange at close of business at date of this Decree, accrued interest thereon, accounts receivable, expenses paid in advance, and from aggregate of above deduct total remaining impounded principal, all unpaid allowances and expenses of the Custodian. The difference so computed shall be the net interest and accretions within the meaning of this paragraph.

Determination of net interest and accretions for other purposes shall be made in accordance with usual accounting practice.

Ab. To render certain, and not subject to fluctuation, the amount so to be paid to the assured, the Custodian is directed to sell and convert into cash sufficient of the securities now in his custody to create a fund from which the Custodian shall make restitution to assured as respects both impounded fund and net interest and ac-

cretions as herein provided, and if the amount cannot by him be calculated with certainty, he may create such fund upon estimation subject to later correction by him, which said sums so derived he shall deposit, subject to his withdrawal as Custodian, as a trust fund with The Commerce Trust Company of Kansas City, Missouri, out of which the Custodian shall make distribution to assured, but such trust company shall not be responsible for the disposition of such fund by the Custodian; Provided, that if such sum or sums be deposited upon estimation, and be later found to be excessive or inadequate, the Custodian shall make the necessary adjustments in said trust fund.

Ac. The Custodian shall pay and distribute to the assured the amounts as provided in paragraph A and paragraph Aa hereinabove, as soon as is practical for him after closing his books and accounts, and shall pay the said sums on each policy by the issuing and mailing of a check to the assured named in the original impounding report in his possession, and to the addresses therein given; Provided, however, that if there are or shall be any claims or assignments filed with him that create any dispute as to who is entitled to the fund due on any particular policy, he may apply to this Court for further orders in regard thereto; the Court retaining full jurisdiction to make any and all further orders in regard to the preservation, payment and distribution of these funds, as to the method and manner of so doing, the determination of the rights of particular parties to receive the funds, and any and all other matters in connection therewith, except that such claims or assignments must be filed with the Custodian on or before June 30, 1936, or be forever barred in distribution under this Decree. The Custodian shall not be required to personally sign such checks, but may delegate others to sign same, or may use any of the customary signature-making or check signing devices in executing same. The Custodian may place on such checks a recital providing that same shall not be valid unless presented for payment on or before a date to be fixed by him.

B. At the time, in the manner, and subject to the withholding, and the right to withhold, and upon the conditions, hereinafter set forth, the Custodian shall distribute and pay:

1. To the plaintiff, 50% of the net fund reported and impounded with him by the plaintiff

upon all policies upon which impounding is made; and

2. To Robert J. Folonie, one of the counsel for plaintiff, and Charles R. Street, Chairman of the Committee for the Insurance Companies, who, for them, are supervising this litigation, as Trustees for and on behalf of plaintiff, or the survivor of them or their successor or successors, 30% of the net funds reported and impounded as respects all policies effective prior to May 1, 1935, and 16-2/3% of the net funds reported and impounded by the plaintiff upon policies effective after April 30, 1935, which said sum so paid to said Trustees are paid to them as Trustees for the plaintiff for which (as well as any other amounts to be paid to them under this Decree) they shall account only to the plaintiff; but if this Court shall so order, they are to file a report of disbursements with the Judges of this Court. The Custodian shall not be obligated to see to the application by the Trustees of the amounts by him paid to them under the provisions of this Decree.

The Custodian is directed forthwith to disburse to the plaintiff as a partial payment on account of the above mentioned distribution provided for plaintiff, an amount equivalent to 50% of the net fund impounded with the Custodian by plaintiff up to July 15, 1935; and the Custodian is directed forthwith to disburse to said Robert J. Folonie and Charles R. Street, Trustees, as a partial payment on account of the above mentioned distribution provided for said Trustees, an amount equivalent to 30% of the net fund impounded with the Custodian by said plaintiff up to July 15, 1935; Provided, however, that if these distributions (together with the distributions to be made to the assured under the provisions of subparagraph A hereof) would result in distributing all or within five per cent (5%) of the total net fund impounded by the plaintiff, the Custodian is authorized to reduce the percentage or amount of the distribution to the plaintiff to an amount that will leave in the possession of the Custodian after making provision for refunds for the assured under paragraph A, a sum equivalent to five per cent (5%) of the total net fund impounded by the plaintiff. The balance of the fund remaining subject to distribution to the plaintiff and the Trustees respectively as provided in this sub-

paragraph B shall be withheld and retained by the Custodian subject to the further order of the Court.

All payments in this Decree provided, whether of principal distributable to plaintiff, or principal or interest and accretions distributable to the Trustees, shall be made by the Custodian as far as practicable by the delivery to the party entitled to receive payment, of securities held by the Custodian, to be selected by the Custodian, which shall be accepted and credited on the amount payable at the market value thereof (including accrued interest) as reflected by the closing quotation on the New York Stock Exchange at the close of business on the last business day preceding the date of the Custodian's making delivery, or ordering the shipment thereof.

C. The Custodian shall, out of the balance of accretions and interest left after charging against the same the amount to be refunded to assured under the provisions of paragraph Aa hereof, pay the court costs; all unpaid or future expenses of the Custodian as have been or may be by the Court authorized and the lawful charges of and allowances to the present or past officers or appointees of this Court, and their agents, employees and attorneys; and other charges which may be by the Court from time to time directed. Any interest or gain from the handling of the funds subsequent to the date of this Decree shall be added to the interest and accretions above referred to, and if any securities shall be sold at a loss or other losses occur, the deficiency shall be charged against such balance.

After the Custodian has made all of the payments and distributions required under the provisions of this Decree, the remainder of said fund not so expended or required, shall be paid to Robert J. Folonie and Charles R. Street, Trustees for the plaintiff, or the survivor of them, or their successors, provided that if at any time it shall be made to appear to the Court that it is unnecessary to longer retain all of said fund, then upon proper application therefor the Court may order payment to the Trustees of such part as the Court finds to be in excess of the amount necessary to be retained for such purpose.

The Custodian need not allocate or assign any part of the net balance of interest and accretions fund as same exists at any time, to the plaintiff, as said fund has been derived from the investment of funds of this

plaintiff and the other said companies having companion suits in this Court as part of this same controversy.

D. The amounts which under the provisions of paragraph B hereof are to be withheld and retained by the Custodian subject to the further orders of the Court, may be resorted to in case the above interest and accretions fund shall be exhausted, in which event said amount so retained shall be subject to having imposed against it all charges above provided to be made against said interest and increment fund. If the Court shall at any time deem the amount so withheld and retained to be excessive, or to be no longer necessary, upon proper application therefor it may order the distribution thereof in whole or in part.

3. Whenever reference is made herein to impounded funds, or fund reported and impounded by plaintiff, or plaintiffs, it includes the principal amount of impounded funds in the hands of the Custodian at the date of this Decree, or the principal amount of funds that may come into his hands at some later date as herein provided. By the term "net amounts impounded," or the term "net funds" impounded, is meant the amount of the principal of all impounded funds remaining after all credits by cancellation, or otherwise, have been allowed by the Custodian. No interest or accretions shall be considered in determining either the amount of the impounded funds, or the amount of the net impounded funds. In making distribution as herein provided, the Custodian may rely upon any facts contained in the records of impounding as filed by the plaintiff, and shall not be required to consider any facts outside of said records except as contemplated in Ac above.

4. The Federal Reserve Bank of Kansas City is hereby authorized and directed to deliver any or all bonds now or hereafter held by it for said W. T. Kemper, as Custodian, to, or as directed by said W. T. Kemper.

5. Except to the extent that same may be inconsistent with specific provisions hereof, all power and authority given to the Custodian by this Court under any of its orders heretofore entered, shall continue until further order of the Court.

6. The Custodian is authorized to permit or require the plaintiff to report other additional impoundings of any premium collections respecting policies effective prior to November 11, 1935, and not previously reported, and

cancellations or endorsements effective prior to November 11, 1935, upon policies effective prior to that date, and shall advise the plaintiff by mail at least ten (10) days before the final closing of his books after which no further reports will be accepted. Such additional and supplemental reports shall be considered as supplemental and additional to and a part of the impounding reports for the twenty-third impounding period.

7. Notwithstanding dismissal of this cause, the Court expressly reserves power and authority, and retains jurisdiction as respects taxation and assessment of cost and allowances for fees to its officers and appointees (and their attorneys and agents) for services already rendered, or hereafter rendered, and to make orders respecting the obligation of the parties, or the fund for payment thereof, and to make further orders in aid of distribution of impounded moneys, and to make appropriate orders respecting sale, investment, safe-guarding and distribution of impounded moneys, interest and accretions, and disposition of office furniture and fixtures, and discharge of incidental costs and expenses, and to make further orders respecting disposition of records and files in the possession of the Custodian, and to require reports and accounts respecting performance of duties by the Custodian and restitution of moneys to assured, and to take any action deemed necessary to effectuate the purposes of this Decree. Jurisdiction over all persons or parties affected by this Decree is reserved for all purposes of effectuating this Decree.

8. The plaintiff and its sureties are hereby discharged from liability upon temporary injunction bond and interlocutory injunction bond heretofore exacted by this Court and entered into by the plaintiff and its sureties.

9. It appearing to the Court that separate deposits have been made with the Custodian by Underwriters Grain Association and special deposit made by Pittsburgh Underwriters Department, and separate accounts and reports filed by them embodying an impounding for more than one insurance company, the provisions as to distribution to assured above provided, shall be made in identical manner as respects the said funds; and the payments herein provided to be made to the plaintiff shall, as respects such special funds, be made to the said Underwriters Grain Association and the said Pittsburgh Underwriters Department as if they were a plaintiff herein and

subject to like payment to them and to the Trustees as is herein provided respecting payments to insurance companies, except only that payments provided to be made to the plaintiff shall, as respects said funds, be made to said depositors of said funds.

10. The plaintiff, the defendants, the aforesaid Robert J. Folonie and Charles R. Street as Trustees, and the parties mentioned in paragraph 9 hereof, in open court, consent to the making and entering of this Decree. The above Trustees and the parties mentioned in paragraph 9 hereof enter their several appearances as parties hereto and nominate the present counsel for plaintiff as their counsel herein and they and the parties to this suit consent for themselves and their successors that service of notice of any subsequent proceeding in this suit may be upon the present attorneys of record, or their successors, for the parties.

Entered this 1st day of February, 1936.

KIMBROUGH STONE,
Judge of the Circuit Court.

ALBERT L. REEVES,
Judge of the District Court.

MERRILL E. OTIS,
Judge of the District Court."

(Declaration of trust, handed to the reporter, was marked for identification as "Defendants' Exhibit 4, EFM.")

Senator Hollingsworth: We now offer in evidence the declaration of trust executed by Charles R. Street and Robert J. Folonie on the 7th day of February, 1936, and will see that a copy of it is supplied.

(Which said Defendants' Exhibit 4, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

DEFENDANTS' EXHIBIT 4.

DECLARATION OF TRUST.

The undersigned, Charles R. Street and Robert J. Folonie, do hereby declare themselves trustees of certain funds which now are or may hereafter come to their hands, and certain securities which now are or may come into their possession, under and pursuant to the terms of

decree of the District Court of the United States for the Western District of Missouri, Central Division, being a certain decree entered in case in equity, No. 270 in said court, styled "*American Insurance Company, plaintiff, v. R. E. O'Malley, et al.,*" and other cases pending in said court being all pending cases in said court, from No. 270 to 426, both inclusive, in which series certain causes were not pending at February 1, 1936 but were theretofore dismissed. As such trustees we have reduced to possession certain securities now in the custody of City National Bank & Trust Company, as follows:

Receipt Number	Kind of Bonds	Denomination	Par Value
	Treasury Notes B1938, 2 7/8%, due 6-15-38	$100,000.00	$100,000.00
A94024	Treasury Notes B-1939, 1 3/8%, due 12-15-39	100,000.00	400,000.00
87	Home Owners' Loan A 3%, due 5-1-52	100,000.00	100,000.00
549	Treasury Bonds 1955-60 2 7/8%, due 3-15-60	100,000.00	200,000.00
A63940	Treasury Notes A 1938 2 5/8%, due 2-1-38	100,000.00	200,000.00
A76442	Treasury Bonds 3%, due 6-15-48	100,000.00	700,000.00
A65650	Treasury Bonds 1941 3¼%, due 8-1-41	100,000.00	600,000.00
A90151	Home Owners' A 3%, due 5-1-52	100,000.00	200,000.00

And it is anticipated that further sums of money and securities may, in like manner, come to our custody and control, pursuant to such decree and pursuant to decrees which may be entered by the Circuit Court of Cole County, Missouri, in case of *American Constitution Fire Assurance Company* v. *O'Malley,* or by order of the Supreme Court of Missouri in said cause on appeal.

Both of the undersigned do declare that they have no personal interest in said fund directly, altho said Robert J. Folonie has a contingent interest therein, arising out of unpaid fees and expenses which may, in the future, be discharged therefrom, for services rendered and to be rendered, and expenditures made and to be made in connection with such litigation.

Said moneys and securities above mentioned are held in trust for the benefit of interested insurance companies, namely, insurance companies involved in litigation in the courts of Missouri in connection with insurance rates, the general nature whereof is well known to such interested insurance companies so represented by said trustees.

The conduct of such litigation has been entrusted by various companies involved therein to the conduct and management of Subscribers Actuarial Committee, which is a committee existing and created by interested insurance companies for management of such litigation and who have had the conduct thereof under their supervision. The said committee has a membership which changes from time to time, the present membership thereof consisting of Charles R. Street, chairman; Herbert A. Clark, vice-chairman; George Bell, John C. Harding, Walter D. Williams, Ernest A. Henne and Fred W. Koeckert.

Said trustees will, out of the moneys in their hands, pay various sums provided in certain Memorandum of Agreement, made May 18, 1935, between Charles R. Street, as agent for stock fire insurance companies, and R. Emmet O'Malley, superintendent of insurance, and witnessed by Robert J. Folonie and John T. Barker, a copy of which is hereto attached. Said trustees will undertake discharging the obligations of such agreement according to their interpretation and understanding thereof, and, in particular, payment of certain sums to the Superintendent of Insurance and his attorneys, as therein prescribed, and will additionally pay therefrom any sums arising by way of costs, fees, and expenses assessed or adjudged by any court in which such matters are pending, securing vouchers for such payments; and for other payments not so arising out of court orders, judgments, or assessment of costs and fees, will disburse moneys and securities in their hands under direction of Subscribers Actuarial Committee, which directions they will secure from them in writing, to be evidenced by orders or directions for payment upon certification of J. V. Parker, secretary for such committee, or his successor, of action of such committee, or upon the signed order of any two members of such committee, which shall be evidence of the action of such committee in authorizing and directing any payments from such moneys and funds.

The trustees may convert any of such securities and sell or cause to be sold any of them, and may invest or reinvest the proceeds thereof in their discretion.

Such trustees shall continue to act until the purposes of the trust are completed, namely, disposition of all financial attributes of such litigation, including not only sums assessed against the companies for costs, fees and expenses which may properly be discharged therefrom, but also such fees, expenses, repayments of loans or other disbursements which may be so certified to them by Subscribers Actuarial Committee in the manner in which certification thereof is above provided.

The trustees will keep such amount as they deem proper from time to time in bank account, subject to their withdrawal, and, when the purposes of the trust are completed, will distribute the amount remaining under direction of Subscribers Actuarial Committee.

In the event of the death or written resignation of C. R. Street, or upon some new person being created as chairman of Subscribers Actuarial Committee, the Subscribers Actuarial Committee may designate a successor, and such successor, as a condition of succession, shall cause notice thereof to be given to W. T. Kemper, custodian, or his successor in that position; and upon the death or resignation in writing of Robert J. Folonie, the Subscribers Actuarial Committee shall select a successor, who shall be an attorney at law and who shall, if the said case in the District Court of the United States above mentioned be still pending in any particular, file an entry of appearance in said court and show his succession to the court and file his appearance therein and submit to the jurisdiction of said court.

Said trustees declare it to be their intent, after the purposes of this trust are fulfilled, to distribute to insurance companies, or representatives of insurance companies entitled thereto, the remaining part of such fund and secure the approval of Subscribers Actuarial Committee to such proposed distribution as making an appropriate distribution thereof.

It is here set forth as information for the benefit of all parties concerned that the Subscribers Actuarial Committee is a Committee created by the companies, of all classes, who are subscribers to certain activities in which the companies are individually and jointly interested, one of the functions of the Subscribers Actuarial Committee being representation of all companies associated in liti-

gation concerning matters of general interest, which included and includes the rate litigation in the State of Missouri.

Said trustees propose to open a bank account with City National Bank & Trust Company and to give directions to said City National Bank & Trust Company from time to time as to the sale, purchase or conversion of securities, and to make withdrawals from deposits by them made in such bank; but said City National Bank & Trust Company shall not be required to inquire into the authority of said trustees in any acts by them so taken, nor justification nor warrant of said trustees in making any payments, nor verify that appropriate authority from Subscribers Actuarial Committee has been secured by such trustees for performance of any act by them.

In Witness Whereof, we have hereunto affixed our signatures and seals this 7th day of February, A. D. 1936.

(Signed) Charles R. Street (Seal)
(Signed) Robert J. Folonie (Seal)

Q.70. (By Senator Hollingsworth) Now, Mr. Henne, did you have any knowledge with reference to a check issued by the Continental Insurance Company in May of 1935 for the sum of $15,000.00? A. No, sir.

Q.71. And do you have any knowledge now? A. Yes, sir.

Q.72. As to that? A. Yes.

Q.73. When did you first learn that a check for $15,000.00 was issued? A. Oh, I am unable to specify the time. I know it was sometime afterwards. It was issued in New York. I think Mr. Culver told me about it subsequently.

Q.74. Who was Mr. Culver? A. He was the president of the company. It may have been at least weeks afterwards, if not months.

Q.75. Do you know to whom that check was payable? A. No, I do not.

Mr. Bullitt: You have a photostatic copy of it.

Mr. Berger: The check itself is the best evidence.

A. I would change my answer on that to say only what Mr. Culver told me about it. It was payable to Mr. Street, I think.

(A check, handed to the reporter, was marked for identification as "Defendants' Exhibit 5, EFM.")

Q.76. (By Mr. Hollingsworth) I hand you Defendants' Exhibit 5 and ask you to state if you recognize that as one of the home office checks of New York of your company? A. Yes, that is a home office check of our company.

Senator Hollingsworth: We offer in evidence Defendants' Exhibit 5.

The Special Master: It is the check of Continental Insurance Company dated May 2, 1935, drawn on Central Hanover Bank & Trust Company of New York, payable to the order of Charles R. Street, Chairman, in the sum of $15,000.00.

(Which said Defendants' Exhibit 5, so offered in evidence having been previously duly marked, is in words and figures as follows:)

$15000.00

No. AM 083

THE CONTINENTAL INSURANCE COMPANY

NEW YORK, MAY 2, 1935

CENTRAL HANOVER BANK & TRUST COMPANY
NEW YORK

PAY TO THE ORDER OF Chas. R. Shurtleff, Chairman

THE SUM OF $15000 AND 00 CTS DOLLARS

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE

Pay to order of Rd Folonie Atty
Chas R Shurtleff Chairman

Rd Folonie Atty
Harris Trust & Savings Bank

THE HOME

for deposit
Nicks & Folonie
per R J Folonie

PAY TO THE ORDER OF
HARRIS TRUST AND SAVINGS BANK
CHICAGO, ILL.
NICKS & FOLONIE

HARRIS TRUST AND SAVINGS BANK
CHICAGO, ILLINOIS
12-28
1

CENTRAL HANOVER BANK & TRUST CO. N.Y. PAID
10-

Q.77. (By Senator Hollingsworth) Now, when did you first learn of the issuance of that check? A. As I said a moment ago, I can't tell you the date of that, but it was at least weeks—that is the best date that I can give you—after it was issued, on one of my periodical visits to the New York office.

Q.78. With whom did you discuss the matter there? A. No discussion of it. Mr. Culver told me that this payment was made to Mr. Street.

Q.79. Did he tell you for what purpose and how it happened to be paid? A. Legal expenses.

Q.80. Now, at this time, May 2, 1935, the compromise agreement had not been signed? A. I don't know about that.

Q.81. Well, it is dated May 18, 1935? A. Yes.

The Special Master: November, 1935.

Senator Hollingsworth: May 18, 1935, was the compromise agreement. The check is dated May 2, 1935.

The Special Master: The other date was what?

Senator Hollingsworth: May 18, 1935.

The Special Master: After that?

Senator Hollingsworth: Yes, after that.

Q.82. Now, were you told at that time how your company happened to be called upon to advance $15,000.00 direct to Mr. Street as chairman for the purpose of legal expenses? A. No, I was not.

Q.83. Did you make any inquiry? A. No.

Q.84. Was any part of that charged back to your department here? A. Yes, I think it was.

Q.85. And did you enter it on your book as legal expense? A. Yes.

Q.86. Did you know what legal expenses it was supposed to pay? A. No.

Q.87. Did you know it was in connection with the Missouri rate litigation? A. Yes.

Q.88. Who is Mr. Louis Moeckel? A. He is an employee in the New York office, I think chief clerk. I wouldn't know his title.

Q.89. Were you told at that time by Mr. Culver that if this money were not used it would be returned, if the settlement did not go through? A. He didn't tell me anything about that.

Q.90. You didn't ask him? A. No.

Q.91. Did you afterwards receive any information to that effect? A. I don't recall that I did.

Q.92. I think there is—well the record is there. Did Mr. Culver tell you anything further at that time? A.

No, the only discussion that I had with Mr. Culver, or rather, the only advices from Mr. Culver were subsequently a letter when he called for reimbursement, and I think you have a photostatic copy of that letter.

Q.93. And then will you find that letter, see if it is in there? A. Well, maybe I am wrong. I saw it somewhere in here.

(Witness examines the file.)

A. Here it is (indicating).

Q.94. That is in 1936. A. That is the one. This was a letter calling for reimbursement.

(Said letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 6, EFM.")

Q.95. I hand you Defendants' Exhibit 6, which is a letter from the president under date of April 16, 1936, addressed to E. A. Henne, vice-president, Chicago.

Mr. Berger: You mean the president of the Continental Insurance Company?

Senator Hollingsworth: I presume so.

Q.96. And ask you to state if that is the first communication that you got here in Chicago in regard to that $15,000.00 check. A. That has no reference to the $15,000.00 check. He makes this with reference to the total payments that we made for legal expenses in Missouri.

Mr. Berger: That is in 1936?

Q.97. (By Senator Hollingsworth) It is in addition to the $15,000.00? A. Oh, yes, I see, yes. As I recall, that is all the correspondence, yes.

Q.98. Well, prior to April 16, 1936, had your company here been debited for its proportionate part of that $15,000.00? A. I don't recall that.

Q.99. Well, do you recall whether your company made an independent income tax return? A. No, I wouldn't have anything to do with that. That is a function of the New York office.

Q.100. There is no income tax return made here for the Chicago office? A. No. It might be verified. The record prepared by New York might be verified, as far as I know, for accounting purposes in New York. That is as much as I would know about that.

Q.101. Did you ever receive any information how much money was raised at the time the $15,000.00 check was given? A. Yes, in a statement from Mr. Culver that there was $100,000.00 raised.

Q.102. Did he say how it was raised? A. No, other than by contributions of several companies, and I don't recall that he identified them.

Q.103. Did he tell you how many companies? A. No.

Q.104. Did you know at the time you talked to Mr. Culver that the settlement was going through? A. No.

Q.105. You were not familiar with the terms of it at all? A. No—well, I suppose you mean by "going through" that it was a concluded job?

Q.106. Yes, being signed up? A. I answered no.

Q.107. Now, after the settlement was made and the decree entered there were some $9,000,000.00 of impounded funds? A. In round numbers, yes.

Q.108. In the Missouri litigation? A. In the federal cases.

Q.109. And under that trust agreement the companies received 50 per cent outright from the custodian, less some percentage held for incidental or unforeseen expenses? A. What do you mean, the trust agreement?

Mr. Berger: That is not in the trust agreement.

Q.110. (By Senator Hollingsworth) That is in the decree. Well, in the decree. A. In the decree, that is my understanding of it, yes.

(Whereupon, discussion was had off the record.)

Q.111. Now, after the entry of the decree, your company received from the trustees, did it not, a check for 11 per cent of the impounded funds? A. Yes; I think that was the amount.

Q.112. The 11 per cent being a part of the 30 per cent that was allocated for the payment of expenses? A. Yes.

Q.113. At the time you received that 11 per cent did you also receive any correspondence from Mr. Street in which he asked you to return to him as agent, 5 per cent? A. No.

Q.114. Sir? A. No.

Q.115. You know that you received the 11 per cent out of the 30 per cent allocation, and that the companies who got the 11 per cent were called upon to pay back to Mr. Street 5 per cent, do you not? A. Yes, I know that.

Q.116. You knew that? A. But I wasn't called.

Q.117. That was done in your New York office? A. Yes.

Q.118. Well, did your western office receive its portion of the 11 per cent? A. I think we did, yes.

Q.119. Did your office pay back to Mr. Street 5 per cent, making your net 6 per cent? A. No.

Q.120. That was done through the New York office? A. Yes.

Q.121. But it was debited to you, was it not? A. Subsequently.

Q.122. Sir? A. Subsequently.

Q.123. Subsequently debited to you? A. Yes.

Q.124. At the time it was debited to you, what information did you get as to the purpose of the 5 per cent paid back to Mr. Street? A. That is what that letter that you identified of Mr. Culver's, that right there (indicating).

Q.125. That is the letter in which you were advised by the president as follows:

"During my absence the question of providing money to cover legal expenses in the Missouri rate case had some consideration, and a payment of $22,323.12 was made, which, in addition to the fifteen thousand already paid sometime ago shows a payment by our companies of $37,323.12.

"It seems to me that the easiest way to dispose of this matter is for you to send us one check for this amount, namely, $37,323.12, and we will make proper disposition of it here and clear our books.

"I assume that you will charge the item to legal expense in connection with the Missouri case, but that part of the transaction I will leave to your best judgment." A. Yes, sir.

Q.126. You understood it was for legal expense, did you? A. Yes, sir.

Q.127. Well, did you understand this part of the letter that gave you any judgment as to how you would charge it down here? A. That is just Mr. Culver's way of turning it over to me and leaving it to my judgment. He never interferes with the Western Department affairs. He tells me to run it.

Q.128. Why was there any question about charging it to legal fees? A. Well, I assume that it was in connection with expense in Missouri and the only expense that we would have in Missouri in connection with the litigation would be legal expense.

Senator Hollingsworth: We offer this letter, Defendants' Exhibit 6, in evidence.

(Which said Defendants' Exhibit 6, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"AMERICA FORE"

51
4/21

THE CONTINENTAL INSURANCE COMPANY
NIAGARA FIRE INSURANCE COMPANY
FIRST AMERICAN FIRE INSURANCE COMPANY
FIDELITY-PHENIX FIRE INSURANCE COMPANY
AMERICAN EAGLE FIRE INSURANCE COMPANY
MARYLAND INSURANCE COMPANY OF DELAWARE

ERNEST STURM, Chairman of the Boards
BERNARD M. CULVER, President
EIGHTY MAIDEN LANE, NEW YORK, N.Y.

COPY

April 16, 1936

X

Mr. E. A. Henne, Vice President
Chicago Office

Dear Mr. Henne:

During my absence the question of providing money to cover legal expenses in the Missouri rate case had some consideration, and a payment of $22,323.12 was made, which, in addition to the fifteen thousand already paid some time ago, shows a payment by our companies of $37,323.12.

It seems to me that the easiest way to dispose of this matter is for you to send us one check for this amount, namely $37,323.12, and we will make proper disposition of it here and clear our books.

I assume that you will charge the item to legal expense in connection with the Missouri case, but that part of the transaction I will leave to your best judgment.

If you agree as to this plan, I would be glad to have your check for the amount above named.

Yours very truly,

President

D-6

Q.129. Well, now, you know that there was 30 per cent of substantially $9,000,000.00, did you not, that was for the purpose of payment of expenses of this litigation? A. Yes.

Q.130. Now, 5 per cent of $9,000,000.00 was some $450,000.00 more that the companies were called on to pay. You knew that? A. Yes.

Q.131. Did you make any inquiry as to why that additional attorneys' fee might be called for when you already had some $3,000,000.00? A. No, I did not.

Q.132. Did it suggest any strange situation to you? A. It did not. My superior officer paid this money and I wouldn't question him or his authority for paying it.

Q.133. But you were charged on your books with your part of it? A. Quite right.

Q.134. And I believe you said you had nothing to do with the income tax return? A. No, nothing whatever.

Q.135. Now, who is Bert W. Jones? A. He is our assistant comptroller in this office.

Q.136. Here? A. Yes.

Mr. Berger: By "here" you mean Chicago? A. Yes.

Mr. Berger: I did not want to interrupt you, but you had him on the New York list.

Senator Hollingsworth: Yes, I know.

(Letters, handed to the reporter, were marked for identification as "Defendants' Exhibits 7, 8 and 9, EFM.")

Q.137. (By Senator Hollingsworth) Now, I hand you Defendants' Exhibits 7, 8 and 9, and ask you if you recognize these as letters and carbon copies of letters in your files in connection with this matter. A. Well, I recognize this initial down here and I take it that these are carbon copies in my file, but they would be in Mr. Jones' file. I wouldn't swear that they were there. I recognize, however, the "BWJ" as his initials.

Q.138. There is no question about those being files? A. I don't question it at all, no.

Senator Hollingsworth: All right, we now offer in evidence Defendants' Exhibits 7, 8 and 9.

A. Let me see the rest of them, will you please?

Senator Hollingsworth: Yes.

(Which said Defendants' Exhibits 7, 8 and 9, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

MR. CHAS. E. SWAN, TREASURER
NEW YORK OFFICE.

Mr Morckel

RECEIVED
APR 27 1936
CHAS. E. SWAN

April 20, 1936

Mr. B. M. Culver, President,
New York Office.

Dear Mr. Culver:

In the absence of Vice President Henne, Miss McCormick, his secretary, has referred to me for attention your letter of April 16 with reference to the payments made by the Home Office amounting to $37,323.12 for legal expenses in connection with the Missouri Rate Case.

In accordance with your suggestion we are enclosing herewith Continental Insurance Company check payable to the company for the amount referred to. This payment represents five per cent of the impounded premiums up to and including April 30, 1935 and is divided among the five companies on the following basis:

Continental	$ 14,326.42
Fidelity-Phenix	16,834.59
Niagara	2,498.29
American Eagle	2,360.28
First American	1,303.54
	$ 37,323.12

The companies listed above are reimbursing the Continental for the amounts mentioned.

Yours very truly,

Assistant Auditor

22-7

54

COPY

Copy
for Mr. E. A. Henne
Chicago

Chicago, Sept. 25, 1936

TO THE GOVERNING COMMITTEE:

Missouri Impounded Premiums
Treatment of the Expense Item.

Following my report to the Committee dated July 22nd, 1936, I have conferred with representatives in this city of Joseph Froggatt & Company, Insurance Accountants, and am advised that their recommendation would be to carry this item as legal expenses in the Convention Form of Annual Statement, page 11, item 69, as "Legal Expenses in re Liquidation Missouri Impounded Premiums."

This would be in addition but separate from the usual item of legal expenses carried under "Disbursements" on page 3, item 27 of the Convention Form.

- The recommendation of the insurance accountants, if adopted, will leave this item out of any calculation of the underwriting results in Missouri. In other words, the treatment of this item as recommended by Joseph Froggatt & Company will affect only the net surplus account of the statement, just as dividends to stockholders reduce net surplus.

C. R. S.

COPY

"AMERICA FORE"

INTER-OFFICE COMMUNICATION

WESTERN DEPARTMENT

DATE October 29, 1936

TO

Mr. William H. Emes, Auditor,
New York Office.

COMPANY

SUBJECT

Dear Mr. Emes:

Enclosed is copy of a letter sent out by Mr. C. R. Street to the Governing Committee of the Western Underwriters concerning treatment of expense in connection with the Missouri Impounded premiums insofar as the annual statement is concerned. The decision in connection with this matter, of course, lies with you.

The legal expense paid so far in connection with the Missouri Impounded premiums amounts to $37,323.12.

Yours very truly,

Bert W. Jones
Assistant Auditor

A. This Exhibit 8 is a letter from Mr. C. R. Street.

Q.139. You recognize it? A. I recognize it.

Q.140. As having been received in your office? A. I don't doubt but what it was because this subsequent letter, your Exhibit 9 from Bert Jones would identify it as such.

Mr. Berger: There is no question about these. We furnished them to Mr. Milligan and he got it to you. We will stipulate that every one of those things is genuine if that is what you want.

The Special Master: Just listen, Mr. Hollingsworth, hereafter if you have the photostatic copy of any letter or the photostatic copy of any carbon copy of a letter and you offer it in evidence and it is not objected to on that ground, I will treat it as evidence and these parties know now that if they do not object, that I understand that it is conceded that such a letter—

Mr. Bullitt (Interrupting): Everything there we furnished to Mr. Hollingsworth.

The Special Master: I am trying to shorten it this way. We will waive the necessity for identifying them. If you offer it and they do not object on the ground that its authenticity has not been established, it will be treated by me as an admission that it has been established. I am not trying to make it hard. I am just trying to make it easy.

Senator Hollingsworth: I appreciate it. I understand. I want to get at another matter now.

The Special Master: And let it be stated that I am expecting the attorneys for both sides to object on the ground that any instrument has not been properly authenticated, if they claim that it has not.

(Whereupon, discussion was had off the record.)

The Special Master: Let me ask this witness a question. Then you make up your mind how far you want to go. Mr. Henne, you have already testified that the payments were made out of the New York office? A. Yes, sir.

The Special Master: That on April 16, 1936, you received a letter asking for a reimbursement to the home office in the sum of $37,323.12?

A. Yes.

The Special Master: That was honored?

A. Yes, sir.

The Special Master: And the transfer was made and put in your books accordingly?

A. Yes, sir.

The Special Master: That is the way they handled it. And let me ask a few more questions: In your insurance company do you have a Western Department?

A. Yes, sir.

The Special Master: Were you the manager of it at that time?

A. Yes, sir.

The Special Master: And so far as underwriting is concerned, the Western Department and the home office department are treated as just like they were two insurance companies for the purpose of underwriting only?

A. Yes.

The Special Master: But you do consolidate every year so that there can be one income tax made for the whole company?

A. Yes, sir.

The Special Master: So that if there is an expenditure made by the home office that really arises out of business which was done in the states embraced in the Western Department, there has to be a transfer so that the expense of the business in your states will be reflected on your own books?

A. Right.

The Special Master: All right, go ahead if you want to ask any more questions.

A. And I might add to that, your Honor, that this one check was allocated to the different companies interested as expense on the proportion of the business involved as expense against the individual companies, so we carry for thirty days all the expense item, and pay all bills out of the Continental, but at the end of thirty days we allocate the expense to the individual companies.

The Special Master: All right. Then I will ask this: Is your company, the Continental, the parent company or the leading company in a fleet?

A. It is the leading company. It is not the parent company but it is the leading company in the fleet.

The Special Master: And to the extent that there is any clearing house between those allied companies, why, the Continental acts as such?

A. Yes.

The Special Master: When you speak of this $37,323.12, although you got the request and it was addressed to the Continental, it was, in fact, the expense of that fleet?

A. Yes.

The Special Master: In proportion to its premium writings in the State of Missouri?

A. Right.

The Special Master: All right. Now, do you want to ask any more?

Senator Hollingsworth: Not on that particular point.

Mr. Berger: Don't you think the record ought to show what companies are in that fleet?

A. The allocation is right there in that letter.

Mr. Berger: In other words, what cases it affects?

The Special Master: Suppose we adjourn to one o'clock.

Whereupon, the further taking of testimony in said case was adjourned to one o'clock of said Thursday, July 27, 1939.

Afternoon Session, Thursday, July 27, 1939.

Pursuant to adjournment as aforesaid, at one o'clock p. m. of said Thursday, July 27, 1939, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

ERNEST A. HENNE, resumed as a witness on behalf of the defendants, having been previously duly sworn, and testified further as follows:

Direct Examination (Continued) by Senator Hollingsworth.

Q.141. Mr. Henne, I will ask you to look at this letter of April 16th for the purpose of refreshing your recollection as to its contents. A. Yes.

Q.142. Now, you know on April 16th, after the receipt of that letter, that some $37,323.12 had been paid out by the New York office and chargeable to legal expenses? A. Yes, sir.

Q.143. You knew that consisted of a $15,000.00 check of the Continental Insurance, and a $22,323.00 check? A. I didn't know it was divided that way at the time. I might have known if I had refreshed my memory from the records.

Q.144. Now, at the start of this litigation, it was the practice, I believe you stated, for these expense items, especially in regard to attorneys, to be referred to the

committee. The committee passed on them and it passed then to the Underwriters for payment, or the rating committee? A. Yes.

Mr. Berger: The rating bureau.

Q.145. (By Senator Hollingsworth) The rating bureau for payment? A. Yes.

Q.146. When you learned this you knew that that method had not been pursued, didn't you? A. When I learned what?

Q.147. That the bill had been passed upon for legal fees in the sum of $37,000.00 by your company, you knew that that had not been handled in that manner, didn't you? A. I don't quite follow you on that.

The Special Master: What he asked you is this: Up to that time, he said, your committee that had charge of this litigation had been passing upon the expenses?

A. Yes, sir.

The Special Master: Approving them or disapproving them?

A. Yes, sir.

The Special Master: But when you got this letter from the home office, you knew that that referred to something that your committee had not passed upon?

A. That is right; it had not been before the committee.

The Special Master: You were still a member of the committee?

A. Yes, sir.

The Special Master: And did you make any inquiry of Mr. Street in any manner as to why this payment of legal expenses was handled in that manner?

A. I did not.

Q.148. (By Senator Hollingsworth) And it was the duty of the committee to pass on these particular bills? A. Bills that were presented to it, yes.

Q.149. And this was a bill, of course, which you recognized as a member of the committee in connection with legal expense in the Missouri rate litigation? A. I can't answer yes to that. My president advised me by letter that certain payments had been made by our New York office to Mr. Street that should be charged to legal expense.

Q.150. And as a member of the Actuarial Committee you made no inquiry, etc.? A. No.

Q.151. Was that ever discussed in the committee? A. No, sir, not to my knowledge.

Q.152. It was never mentioned by the committee at any time? A. Not to my knowledge.

Q.153. Was there ever any other time when legal expenses in connection with the Missouri rate litigation had been handled other than through the committee by passing on bills? A. Well, not to my knowledge, no.

Q.154. The general routine was that way? A. Yes.

Q.155. Now, I show you a letter of Mr. Street's, Defendants' Exhibit 8, addressed to the governing committee, and a copy to you. What is the governing committee? A. The governing committee is the executive committee of the Western Underwriters' Association.

Q.156. The executive committee of the Western Underwriters' Association? A. Yes.

Q.157. What is its connection with the Actuarial Committee? A. Well, the members of the Western Underwriters' Association are all companies subscribers to the various rating bureaus, no connection whatever insofar as it is a company association.

The Special Master: Just a minute, let's get this, what these things are. You are now talking about the Western Underwriters' Association?

A. The question was, what was the governing committee. The governing committee, it isn't identified here, but I am assuming, and the only governing committee that I know is, in more common terms of the street, the executive committee or the Board of Directors of the Western Underwriters' Association termed as the governing committee.

The Special Master: The Western Underwriters' Association is a rating bureau, is it?

A. No, has nothing whatever to do with rating matters.

The Special Master: What does it have to do with?

A. It is a trade association in the sense a bankers' association or the bar association may be a voluntary organization of individual executive insurance companies.

The Special Master: To exchange views and pool their common efforts on matters that affect stock fire insurance companies in general, is that the idea?

A. Yes.

The Special Master: All right.

Q.158. (By Senator Hollingsworth) I believe you received a copy of that letter, "Copy to Mr. Henne, Chicago." A. Yes.

Q.159. That letter is dated September 25, 1936. A. Yes.

Q.160. This letter is headed, "To the Governing Committee, Missouri impounded premiums, treatment as of the expense item." That referred to what expense?

Mr. Berger: The letter speaks for itself.

A. It speaks for itself, I think, Missouri expense.

Q.161. (By Senator Hollingsworth) I hardly think that it does directly. I am asking does it refer to the attorneys' fees? A. Missouri impounded premium, treatment of the expense item. May I read the letter?

The Special Master: Let me look at it.

Q.162. (By Senator Hollingsworth) Did you understand this letter, Defendants' Exhibit 8, to refer to the item of legal expenses as being the item which your companies contributed some $37,000.00 to? A. That is part of the item. I would say that any reference to impounded and legal expenses meant not only that item, but every other bill we paid in connection with the Missouri rate litigation.

Q.163. But he advised you in there that you would carry this as a legal expense in the convention form of annual statement, page 11, item 69, etc.? A. Yes.

Q.164. Why was there any question as to carrying this item as to legal expenses? A. I couldn't tell you that. There wouldn't be any question in my mind because it was the only way and manner in which we could charge any item in connection with Missouri rate litigation.

Q.165. Then I notice the second paragraph of the letter says this: "This would be in addition but separate from the usual item of legal expense carried under 'Disbursements' on page 3 item 27 of the convention form." Why was that broken down, this particular item, and not carried under usual legal expenses? A. I couldn't answer that question.

The Special Master: What is it on page 3?

A. What?

The Special Master: What is the item, page 3?

A. Without having page 3, I imagine it is a matter of allocation of all expense. The page 3 referred to is the annual statement which is a form prepared by the Insurance Commissioners and maybe Judge Lucas could identify that particular statement. I don't make annual statements, but that is what that has reference to.

The Special Master: Do you have a blank annual statement here?

Judge Lucas: No, sir.

The Special Master: I am just wondering whether that is the place where you report legal expense in connection with contested claims on policies.

Senator Hollingsworth: I am not familiar with that fact.

The Special Master: Well, it might be that that page 3 of the form would give a better explanation than the witness could possibly give.

A. We can get you page 3 of the form if that is what you wish.

Q.166. (By Senator Hollingsworth) I notice the following: "The recommendation of the insurance accountants, if adopted, will leave this item out of any calculation in the underwriting results in Missouri." What was the purpose of leaving that out of the underwriting results in Missouri? A. I imagine that it was on advice of the legal accountants there, Froggatt and Company, I think, are experts on insurance accounting, that it wouldn't be a proper charge against the normal Missouri expense.

The Special Master: A nonrecurring expense.

Q.167. (By Senator Hollingsworth) Now, the ordinary attorneys' fees that you had paid prior to the $15,000.00 disbursement and the $22,323.12 disbursement had been theretofore carried in calculating the underwriting results in Missouri, had they not? A. I wouldn't know.

Q.168. You wouldn't know? A. I wouldn't know; I couldn't answer that question.

Q.169. Now, did you know, Mr. Henne, that after the declaration of trust, that Folonie and Street as trustees paid out attorneys' fees and expenses out of the trust fund to Hicks and Folonie and other attorneys? A. Yes.

Q.170. And you knew, did you, at the time? A. Those Hicks and Folonie bills, as I recall, were all presented to the committee.

Q.171. Presented to the committee? A. Yes.

Q.172. And you knew at the time that your companies were called upon to make this distribution to Mr. Street as chairman and Mr. Street as agent, that the trustees had on hand for the payment of attorneys' fees in excess of $1,000,000.00?

Mr. Berger: We object to the form of the question in that the assumption is not a fact, when the $100,000.00

was paid, there wasn't any trust fund. The trust fund did not come into existence until February 7, 1936, and those other payments were made in May, 1935.

Senator Hollingsworth: I think you are right about that, Mr. Berger.

The Special Master: While you are stopped, is it admitted that the item that refers to legal expenses on page 3 of the annual statement is item 27 as follows: "Legal expenses excluding legal expenses on losses"?

Senator Hollingsworth: Is that admitted by me?

The Special Master: I am asking, is it admitted by both people?

Mr. Berger: What line does he say it is?

Senator Hollingsworth: I will read from the letter. It is under the heading on page 3, item 27 of the convention form.

Mr. Berger: This is the convention form.

The Special Master: Is that admitted?

Mr. Berger: As far as we are concerned, it is.

Senator Hollingsworth: So far as I am concerned, whatever it shows.

Q.173. (By Senator Hollingsworth) Now, at the time the companies gave a check on March 21, 1936, for $22,323.12 for legal expenses, you knew, did you not, that the trustees had on hand for distribution out of the retained 30 per cent, a large amount of money? A. Yes, but I didn't know that this $23,000.00 was being collected.

Q.174. When did you learn that? A. I don't recall the date, but I knew nothing about any collection of any funds by Mr. Street until after the job was finished. I couldn't identify the dates of the thing.

Q.175. Well, you knew on March 21, 1936, where you received 11 per cent disbursement, that you had been called upon to send back to Mr. Street as agent, $22,323.12? A. No, I wouldn't admit that because this is a letter addressed to Mr. Jones, our auditor, and it might never—I am not denying that I didn't see that letter, but I don't recognize at this time that I did.

Q.176. But your office did receive that letter on March 21, 1936? A. Oh, yes.

Q.177. Isn't it a fact, Mr. Henne, that about the date of that letter or shortly thereafter you learned that this expenditure of $22,323.12 by the companies—disbursement by the companies to Mr. Street was made to Mr. Street as agent? A. Yes, I am willing to admit that, but I can't specify the dates.

Q.178. All right, but it was shortly after receipt of that? A. Undoubtedly, yes.

Q.179. Now, did you make any inquiry of anyone as to why that was made to Mr. Street as agent instead of going through the committee? A. No, I did not.

Q.180. Did it strike you as being peculiar in any way? A. No, it did not.

Q.181. You know that the committee of which you were a member had not passed on it? A. Yes.

Q.182. And had not been consulted about it? A. Right.

Q.183. And you were charged with the duty of handling the funds that came into the hands of the committee in paying them out? A. Well, the committee as such had no funds.

Q.184. Well, at least passing on the disbursements that were to be made by the rating bureaus?

Mr. Bullitt: He has not said that.

A. No, no.

Q.185. (By Senator Hollingsworth) In regard to the litigation expense? A. Yes.

Q.186. It was your duty to pass on these bills, was it not? A. It was our practice to, yes.

Q.187. And your practice? A. Yes.

Q.188. And you understood it to be your duty to do that? A. I would have to admit that, yes.

Q.189. Did you have any purpose in not asking Mr. Street about it? A. No, it never occurred to me. This was a disbursement made by our New York office and I wouldn't question their action.

Q.190. Even as a member of the Actuarial Committee? A. Yes.

Q.191. Since this occurred have you made any endeavor to ascertain what became of the money that was paid to Mr. Street? A. No.

Q.192. You haven't? A. No.

Q.193. You have read through the press, have you not, that this money was paid to Thomas J. Pendergast of Missouri and others as a bribe or for a fraudulent purpose? A. Yes, I have read those articles in the press.

Q.194. You have made no endeavor to ascertain whether or not that is true? A. No.

Q.195. Why not? A. Well, I didn't think it was any of my business. I had nothing to do with it and I didn't want to become involved in it in any way.

Q.196. You were a member of the Actuarial Committee in charge of the litigation? A. That was an

action entirely outside of the Actuarial Committee's knowledge.

Q.197. Is that the reason you made no inquiry? A. That was the reason I didn't want to know anything about it.

Q.198. And you don't want to know anything about it? A. No.

Q.199. Has any member of the Actuarial Committee, to your knowledge, made any investigation to find out whether or not these charges are true? A. Not to my knowledge.

Q.200. Has the Actuarial Committee discussed them? A. No.

Q.201. Neither formally or informally? A. No.

Q.202. Have you discussed it with anyone? A. Just in a matter of gossip.

Q.203. Just a matter of gossip? A. Subsequent to this newspaper publicity, I was bound to talk about it.

Q.204. As a member of the Actuarial Committee do you know of any person in the insurance world who at the direction of the Actuarial Committee has undertaken to investigate whether those charges were true? A. No, I do not.

Q.205. Now, the associated companies with Continental were Continental, Fidelity Phenix, Niagara, American Eagle and First American? A. Yes, and there is one other. Those are the five companies that were interested in the federal litigation, and there is one other company, the Maryland.

The Special Master: Does it write fire?

A. Yes.

The Special Master: Did it at that time?

A. It was involved in the state case.

The Special Master: All right.

Q.206. (By Senator Hollingsworth) And are you in charge of the Western Department of each and every one of those companies? A. Yes, sir.

Q.207. Do you hold an office in any company other than the Continental? A. Yes, vice-president of all the companies.

Q.208. Do you have anything to do with the income tax return or making up the income tax return of any of the companies? A. No, sir.

Q.209. Have you received any advice or information through official sources of your parent company in New York about any claim of credit on income tax re-

turns for these disbursements to Mr. Street? A. No, I have not. I wouldn't receive those advices.

The Special Master: Mr. Henne, you were the Western manager for your group of companies at the time, manager of the Western office?

A. Yes. I have been in full charge since about '31, I think, July of 1931.

The Special Master: And you were held responsible for the underwriting results in the states which are under your jurisdiction?

A. Yes.

The Special Master: About eighteen?

A. Eighteen states.

The Special Master: Including Missouri.

A. Yes, sir.

The Special Master: And it is up to you if the loss ratio gets out of line compared to the experience of other successful companies to either get it down or explain or show why it is not the fault of the underwriting practice in your eighteen states?

A. Yes, sir.

The Special Master: And it is your responsibility to keep up, or if possible, to increase the premium volume?

A. Yes, sir.

The Special Master: And to keep down the expenses?

A. Yes, sir.

The Special Master: Did it occur to you when you were told that the home office had paid some $37,323.12 expenses that you didn't know anything about, that there might have been a duplication and that they might have allowed a claim that had already been assessed through the Missouri rating bureau.

A. No.

The Special Master: You didn't think that could happen?

A. No.

The Special Master: Did it occur to you maybe Mr. Street had exceeded his authority and had gone over your committee's head?

A. No, knowing Mr. Street as I do, I wouldn't.

The Special Master: Well, you got notice about this $37,323.00 charged against expenses of your department after you knew that there was 30 per cent of the Missouri impounded funds that had never gotten into the

hands of the company that were available for the payment of the expense of this litigation, didn't you?

A. I knew the 30 per cent was there, but I didn't know until after this money had been paid that it had been paid out.

The Special Master: Oh, I know. I say, when you got notice that your home company had paid it out of funds that it had received—

A. (Interrupting) Yes.

The Special Master (Continuing): —you already knew there was 30 per cent of that impounded fund available for expenses?

A. Yes.

The Special Master: You knew your committee had approved your own lawyers' fees?

A. Yes.

The Special Master: You knew that the impounded funds were going to be used to pay the fees and expenses of the insurance department?

A. That was my understanding.

The Special Master: And you knew that the Master had been paid and the Court costs that had already accrued long since?

A. Oh, yes, I knew that.

The Special Master: Didn't that excite your curiosity one bit?

A. No, sir; I take it that our superior officers know what they are doing.

The Special Master: If they had sent out here and said, "We have incurred $100,000.00 expense for promoting the underwriting in the eighteen states over which you have jurisdiction and are charging it against you," you wouldn't want to know whether they were putting a black spot to your record?

A. Well, I might feel that way, but I don't question the authority of my superiors.

The Special Master: Wouldn't you have even asked to see if you could talk them out of it?

A. I would have kidded them about it afterwards, but I wouldn't question them.

The Special Master: All right. Were they in the habit of just telling you they had charged up against you expenses without any explanation why?

A. Some routine expense, yes, that comes along.

The Special Master: You never checked on it to see whether it was right or wrong?

A. No; no, sir. They know what they are doing, I think.

The Special Master: You think they know more about the Western Department than you do?

A. No, but when it comes to allocating expense, that is their prerogative. I don't know that I have much to say about it. At least, that is my assumption.

The Special Master: But you did recognize it as a transaction out of the usual order of business, didn't you?

A. Yes.

The Special Master: You knew that wasn't the ordinary way of transacting business?

A. Well, I wouldn't—I just can't subscribe to that in this instance.

The Special Master: But you didn't know what the explanation of it was?

A. No, I didn't.

The Special Master: All right.

A. Other than legal expense, if I might add that as explained to me.

The Special Master: But you couldn't imagine what lawyers nor why?

A. No, I didn't know a thing about that.

The Special Master: Do you roughly know what your proportion of the written premiums in Missouri were as to the companies that were engaged in that litigation? In other words, what proportion of that expense was falling on your fleet?

A. Well, I would say somewhere between 6 per cent and 8 per cent, perhaps, of the total premiums in Missouri.

The Special Master: So when you get that notice that there was $37,323.12, at least that was some indication that that was about 6 per cent or 8 per cent of some expense that you didn't know anything about?

A. I knew nothing about it.

The Special Master: Are you through?

Q.210. (By Senator Hollingsworth) Mr. Henne, will you be here after we go up to New York and come back? A. Yes, sir, if you want me, I will. I am scheduled to go on my vacation a week from now, but I will stay here or I will be available when you want me.

Q.211. Now, you said that sometimes you were charged by the home office with routine matters without them telling you or consulting you or advising you what it was about? A. In this manner: They allocate their

office expense—there is a certain supervisory allocation that is allocated on a percentage basis. That is an arbitrary figure set by our New York office by our officials.

Q.212. You didn't consider this a routine matter, this $37,000.00? A. I didn't know anything about it until after it was incurred.

Q.213. That very fact bespoke to you the fact it was not routine matter? A. Quite correct, I will admit that.

The Special Master: You knew this wasn't an allocation of home office expense—

A. (Interrupting) Right.

The Special Master (Continuing): —because you knew that the whole expense of the Missouri rate litigation would fall on your own department?

A. Right; it would be charged to my department, yes.

The Special Master: I am through.

Q.214. (By Senator Hollingsworth) One more question: As a general rule when you issue a check for legal expenses or are charged with legal expenses, you know to whom it was paid and charged on the books? A. Yes, sir.

Q.215. In that case you don't know to whom it was paid? A. No.

Q.216. And your books do not record? A. No legal expense, and neither does any legal expense charged in connection with Missouri expense reflect to whom it was paid, other than to the bureau making the assessment.

Q.217. To the bureau making the assessment? A. Making assessment against us for all expenses.

Q.218. These legal expenses were made through the Actuarial Committee, were they not? A. Right.

Q.219. And you knew when those were made through the Actuarial Committee to whom it was paid and the amount? A. I did, yes, because I was a member of the committee.

Q.220. And all the time that you have testified here about it? A. Yes.

Senator Hollingsworth: I think that is all.

The Special Master: Do you care to proceed, Mr. Bullitt?

Cross Examination by Mr. Bullitt.

XQ.221. Mr. Henne, did the Subscribers' Actuarial Committee employ the lawyers, Hicks and Folonie and Mr. Berger, in these 137 suits in Missouri?

The Special Master: Was that a written contract?

General Bullitt: No, I am just asking did they employ them or who did employ them?

A. I just can't give you a direct answer to that question only this way: Hicks and Folonie are the retaining counsel of our Subscribers' Actuarial Committee or of our group of companies here known as the Western Underwriters Association, and, in fact, they are counsel for a number of our activities, legal advisors. We would quite naturally refer this case to Mr. Folonie and tell him to go ahead with it.

The Special Master: Who did refer it?

XQ.222. (By Mr. Bullitt) I am asking with respect to the 137 suits that were brought in the federal court in Missouri, who told Hicks and Folonie and Mr. Berger to bring those suits in the names of these 137 companies, or do you know? A. I don't know.

XQ.223. Did the Subscribers' Actuarial Committee ever have a meeting and direct the employment of Hicks and Folonie or Mr. Berger or both of them? A. I don't recall that it was ever officially before the committee for action. I would have to refer to the records for that.

XQ.224. Do you know who did tell Hicks and Folonie and Berger to bring these suits? A. No, I don't.

XQ.225. Did the Missouri Inspection Bureau ever do anything about telling the insurance companies that they had had these suits brought? A. I think the Missouri Inspection Bureau sent out a general letter that this litigation was started. I can't recall its substance, but I am sure that would be the formal procedure.

General Bullitt: That is all I want to ask him.

(Witness excused.)

WALTER D. WILLIAMS, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Please state your name. A. Walter D. Williams.

Q.2. Where do you live, Mr. Williams? A. Rockford, Illinois.

Q.3. What is your business? A. Well, I haven't any, not just at the moment.

Q.4. Are you retired from active work? A. Yes, sir.

Q.5. Prior to your retirement, what was your line? A. I was for many years vice-president and manager of the Western Department of the Security Insurance Company at Rockford, Illinois, and for the last three years was president of the company.

The Special Master: Of which company?

A. Security Insurance Company of New Haven.

Q.6. (By Senator Hollingsworth) Does it have an affiliated company known as the East and West? A. Yes.

Q.7. You are in charge of the Western Department for both of those companies, or were at that time? A. Yes, sir, and later was president of those companies.

Q.8. When did you retire? A. The first of May, this year.

Q.9. And are you a member or were you a member of the Subscribers' Actuarial Committee? A. Yes, sir.

Q.10. Throughout the year of 1935? A. Yes, sir.

Q.11. And down to the present time? A. I retired in 1937. Our president had a stroke, my predecessor, and I tried to run the Rockford and New Haven offices and I commuted between. He spent one week at Rockford, and—

Q.12. (Interrupting) Do you know Mr. Powrie? A. Yes, sir.

Q.13. Where is he located? A. Chicago.

Mr. Berger: Powrie is working where?

Q.14. (By Senator Hollingsworth) What is his first name? A. Abe.

Q.15. He is here, I understand, in the building? A. Yes, sir.

Q.16. Of course, you are familiar with the rate litigation in Missouri throughout the years? A. Yes, sir.

Q.17. As a member of the Actuarial Committee when that litigation had its inception, what action was taken by the committee in regard to handling the litigation? A. I don't think that I was—this litigation goes back a long ways and I think the inception of it, the genesis of the litigation antedates my membership on the committee.

Q.18. When did your membership on the committee begin? A. In the 20's somewhere, along '23, '24, '25.

Q.19. It continued on down until December of 1937? A. Until I retired, in 1937, I think it was.

Q.20. And the Actuarial Committee had charge of the litigation, did it? A. I should say so, yes, in a very general sort of a way, as it has charge of all matters of common interest such as litigation.

Q.21. And you knew that Hicks and Folonie were— A. (Interrupting) Oh, yes.

Q.22. (Continuing) —the Chicago counsel and that Mr. Berger of Kansas City was of counsel? A. Yes, sir.

Q.23. The bills that were incurred for legal expenses during that period of time were all paid, I believe, to Hicks and Folonie and Mr. Berger's firm? A. Well, I can't—I presume so, but I can't make a definite answer to that, of my own knowledge, I am talking about.

Q.24. Of later years possibly some more Missouri attorneys came into the picture? A. Yes.

Q.25. Who submitted to the committee for approval the bills for attorneys' fees throughout the years? A. Why, I think Hicks and Folonie.

Q.26. That is your recollection about it? A. Yes, sir.

Q.27. Then they were submitted to the committee as a committee and passed on, were they? A. I think so, yes, in an informal sort of way.

Q.28. Then when those bills were passed on, to whom were they certified or sent? A. The bills were paid, as I recollect, by the Missouri Inspection Bureau. The litigation was in the hands of the Missouri Inspection Bureau, and I think they handled and paid the bills.

Q.29. In other words, your committee approved the bills? A. As I say, we have a sort of general supervision over the matter and suggested that certain bills, as I recall it, rendered by Hicks and Folonie were all right, and they were paid by the Missouri Inspection Bureau.

Q.30. Do you recall the compromise that was made in May of 1935? A. Well, I know there was such a compromise.

Q.31. Did you know that negotiations were pending? A. I didn't know that negotiations were pending until they were completed.

Q.32. Never heard of the compromise at all until it was actually completed? A. No.

Q.33. It was not submitted to you in any way? A. No, I have no recollection that it was submitted until it was submitted as a finished matter.

Q.34. Then you knew that Mr. Street had signed that compromise agreement, I believe? A. Well, I can't —there again I don't want to appear evasive at all, because that is not my disposition. I know that Street negotiated this settlement. Now, whether there was an agreement signed or not, I am not entirely clear. I presume there was, or some memorandum.

Q.35. When did you learn that Mr. Street negotiated it? A. When it was—when we got notice of it. Are you asking for dates?

Q.36. Well, I mean after it was accomplished, did you learn it then? A. Yes.

Q.37. Mr. Street was doing that as chairman of the committee, was he? A. No, I should say not.

Q.38. How did it get out of the committee's hands and into Mr. Street's hands? A. I can't answer that question. Do you know Mr. Street?

Q.39. Only by reputation and history. A. Well, if you did know him, the question would answer itself. Mr. Street was an individualist.

Q.40. Sir? A. Mr. Street was an individualist. He just—

Q.41. (Interrupting) Do you mean that the committee deliberately surrendered it to him or took it away? A. Not at all. They didn't surrender anything, but Mr. Street was a man that didn't consult people. He just went ahead and did things.

Q.42. He was chairman of the committee; he went ahead and did things.

Mr. Bullitt: There again he says "as chairman." That is assuming something. I mean to say those are the things that I object to his putting in, as assumptions.

The Special Master: Yes, I will sustain it. It isn't hurting anything because I know that a man's temperament is a man's temperament, and not in his capacity one way or the other.

Mr. Bullitt: But he says "as chairman." He has already said he didn't do it as chairman of the committee.

Q.43. (By Senator Hollingsworth) After the settlement was negotiated, did Mr. Street submit it back to the committee? A. I beg pardon?

Q.44. After the settlement was negotiated did Mr. Street submit it back to the committee? A. Not that I have any recollection of.

Q.45. How did you learn of it? A. We got a memorandum from—my recollection is we got a memorandum

from Mr. Street that a settlement had been made of the cases in the federal court at Kansas City.

Q.46. Did he give you the terms? A. And told us the terms that 20 per cent of the premiums, the impounded premiums would be returned to the assured, 50 per cent would be returned to the companies and 30 per cent was to be retained for expenses and other things.

Q.47. Now, what did he say about this 30 per cent? A. 30 per cent was to be retained in some sort of a trust fund, is my recollection, for the purpose of discharging obligations or paying expenses.

Q.48. What obligations? A. Attorneys' fees, as far as I understood it, for both the state and for the companies.

Q.49. And the companies? A. Yes, sir.

Q.50. And the amount of impounded premiums was how much, if you recall, approximately $9,000,000.00? A. I should say so, roughly.

Q.51. So you understood that some two and a half million dollars was available for the payment of expenses of attorneys and other expenses of litigation? A. Whatever 30 per cent of the amount was, yes, I should say so.

Q.52. You understood that. And did you know anything about an item of $100,500.00 raised by Mr. Street and turned over to Hicks and Folonie? A. No.

Q.53. Do you know about it today? A. I know about it since this situation has broken, but I didn't know anything about it before.

Q.54. You didn't know anything about it at that time? A. No.

(Letters, handed to the reporter, were marked for identification as "Defendants' Exhibits 10 and 11, EFM.")

Q.55. Now, I show you Mr. Street's words dated March 17th and call them to your attention and offer them in evidence. You do recognize them as letters in your office, do you not? A. I beg your pardon?

Q.56. Defendants' Exhibit 10 and Defendants' Exhibit 11, you recognize those as letters received by you? A. By our office.

Q.57. From Mr. Street? A. Yes.

Q.58. Well, they are addressed, "Mr. Walter D. Williams, Manager," and the other, "Dear Walter." A. Yes.

Q.59. They are both dated March 17, 1936. The notations thereon, I believe, were made in your office, were they not? A. Yes, sir, made by our cashier.

Q.60. In the letter of March 17, 1936, Mr. Williams, you received, I believe, according to the letter addressed to you, reading as follows: "Enclosed are two checks to the order of the Security and East and West representing 11 per cent of the amount of your Missouri impounded premiums as of May 1st last." A. Yes.

Q.61. You had received the greater part of your 50 per cent that was coming direct to the company at that time, had you not? A. Yes. This was a cash transaction. The other was a bond transaction, I think.

Q.62. And you recognized this as being out of the 30 per cent? A. Yes.

Q.63. Now, attached to that I notice a letter addressed to you as "Dear Walter," reading as follows, signed by Mr. Street: "Regarding the official enclosure, was in New York last week and arranged with the big boys down there for the handling of this proposition. After using these checks, please send me your check to my order as agent"—"agent" underscored—"for 5 per cent of the amount of your impounded premiums as of May 1st last. Will give you full details later. All will do the same thing. Yours very truly." Did you send him those checks? A. Yes, sir.

Q.64. From both of your companies? A. Yes, sir.

(Photostatic copies of checks, handed to the reporter, were marked for identification as "Defendants' Exhibits 12 and 13, EFM.")

Q.65. I hand you Defendants' Exhibits 12 and 13 and ask you to state if those are photostatic copies together with the endorsements appearing on the back of each? A. Yes, sir.

Q.66. Sir? A. Yes, sir.

Q.67. For whom was C. R. Street acting as agent when he took those checks? A. I can't tell you. I don't know.

Q.68. Who did you understand? A. I didn't have any understanding about it.

Q.69. Did you have any idea? A. No, sir.

Q.70. Why did you make a check to C. R. Street as agent for an unknown principal? A. Again I can only answer, did you know Mr. Street?

Q.71. I say, I knew him only by history and reputation. A. The same reason will apply to that as for many other things.

Q.72. Did you make it to him as your agent? A. I can't answer that question. I don't know.

Q.73. Mr. Williams, didn't you have any idea or conception of what this check was about? A. It was in connection, I presumed—in fact, I knew, of course, in connection with the Missouri settlement.

Q.74. How do you know it? A. That was common knowledge, I think, later.

Q.75. Well, I know later, but at the time you wrote it. A. Oh, well, I can't tell you. I can't answer that question.

Q.76. The only information you had was that he was "in New York last week and arranged with the big boys for the handling of this proposition"? A. What is the date of that?

Q.77. March 17, 1936.

Mr. Bullitt: The check says what it is for, the face of it.

A. I can't recall all of these, but it seems to me we had received the 50 per cent direct from the custodian, hadn't we?

Q.78. (By Senator Hollingsworth) What I am asking you, though, when you got this information that he had been talking to the big boys down in New York for the handling of this proposition, what proposition did he refer to? A. I never asked Mr. Street. You notice he says he will explain it.

Q.79. Did you think it was contribution to some charity fund? A. No, I thought it was for taking care of whatever expenses it was.

Q.80. Well, what expenses? A. The attorneys' fees, or whatever other expenses there might be.

Q.81. You had just gotten a check from him for 11 per cent refund out of the 30 per cent? A. Yes.

Q.82. So you thought— A. (Interrupting) And in the same letter he asked us to send a check for 5 per cent, didn't he, at the same time?

Q.83. Yes, the same date. Now, did you stop to reason why he didn't deduct the 5 per cent in sending you the check for 11 per cent? A. Yes.

Q.84. Did the fact he wanted that payable to C. R. Street, as agent, make any impression on you? A. Not particularly, in fact, none at all.

Q.85. Did you intend to authorize him to disburse that check as he saw fit? A. I merely sent it to him as agent because he asked us to do it.

Q.86. You understood that he could disburse the fund as he saw fit? A. That was all he asked us, to make the check, and we complied with his request.

Q.87. What expenses, if any, did you think it was in connection with? A. This is without any knowledge, but the impression that it was paying attorneys' fees and getting rid of whatever expenses there were.

Q.88. You knew the 30 per cent of $9,000,000.00 had been allocated? A. 30 per cent hadn't been allocated, as I understood it. 30 per cent was withheld by the custodian in some kind of a trust fund for the discharge of whatever expenses there might have been.

Q.89. Mr. Williams, let me refresh your recollection. Didn't you testify a minute ago that you understood the 30 per cent was withheld for the payment of attorneys' fees and other expenses. A. Yes.

Q.90. So you knew that at the time you got this communication from Mr. Street? A. Yes.

Q.91. And then you didn't understand that this additional money was to be paid for legal expenses, did you? A. What additional money?

Q.92. The money— A. (Interrupting) This 11 per cent?

Q.93. The money that you restored back. A. It is my recollection that the 11 per cent came as part of the 30, was a refund of part of the 30. Then we sent 75 per cent of it back.

Q.94. When he sent you the 11 per cent, you understood that all of the legal expenses had been paid, didn't you? A. Not necessarily, no.

Q.95. Not necessarily? A. No, not necessarily. It was the impression that it was dividend out of the 30 per cent. It wasn't a closed matter.

Q.96. You didn't expect a dividend to come until the expenses provided for in the 30 per cent had been paid, did you? A. I can't answer that question except as to an impression that more money had been withheld than was necessary, and that a certain amount of it would be returned to the companies.

Q.97. All right, then why were you required to send back 5 per cent? A. That I can't answer.

Q.98. You have no idea? A. No, sir.

Q.99. And didn't have any idea at that time? A. No, sir.

Q.100. But you didn't think it was legal expenses, did you? A. Oh, yes.

Q.101. What made you think it was legal expenses? A. Because that was about all the expenses there were in connection with litigation that we knew of.

Q.102. That was about all. Now, then, in this letter he says, "I will give you the full details later." If that were legal expense and you understood it was legal expense, why withhold that information in this letter? A. I don't know unless there was a lot of conversation and things that could be done conversationally that couldn't be done any other way.

Q.103. Why? A. Let me remind you of this: I was commuting between Rockford and New Haven all during this interval, one week in Rockford and the other week in New Haven.

Q.104. I understood that. A. I didn't see Street—

Q.105. (Interrupting) I know. A. (Continuing) —but very, very little. That may have had something to do with his letter, "I will tell you about the details," or something like that, a very offhand letter, is the only answer I can give you.

Q.106. That is the only answer you can give. All right. You did see him later? A. Well, I have seen him later, yes.

Q.107. Did he give you the full details? A. No.

Q.108. Did you ask him? A. No; I would meet him somewhere in a meeting or he would leave or I would leave. I don't think I saw Street at any time.

Q.109. Now, did you see him or didn't you see him? A. Well, I will answer "No." I didn't see him in connection with any details such as you speak of.

Q.110. Your companies of which you were in charge had sent back to Mr. Street $4,263.31 that you didn't know what it was for? A. Yes, sir.

Q.111. You had no information at all? A. Yes, sir.

Q.112. As to what it was for? A. No, sir.

Q.113. You just assumed that it was in connection with the rate litigation? A. Yes, sir.

Q.114. And then you further assumed on the strength of that that it was for legal expenses? A. Yes, sir.

Q.115. And you put it down on your books accordingly? A. Yes, sir.

Q.116. As legal expenses? A. The records will show for themselves there. We charged it to the Missouri impounded premium fund, didn't we?

Q.117. "C. R. Street, Missouri impounded premium." A. We set up on our books.

Mr. Bullitt: You were mistaken in putting into the mouth of the witness that it was charged up for legal expenses. That is what I object to.

Senator Hollingsworth: No, no.

Mr. Bullitt: You stated he charged it up to legal expenses.

Senator Hollingsworth: The witness put that in my mouth. I didn't put it in his.

The Special Master: What does the entry show?

Senator Hollingsworth: It shows impounded premium.

Mr. Bullitt: He certianly used—

Senator Hollingsworth (Interrupting): All right, "C. R. Street, Agent, Missouri impounded premium, dep."

A. He is our chief accountant.

Mr. Bullitt: It is legal expense.

Senator Hollingsworth: "C. R. Street, Agent, Missouri impounded premium, dep."

Mr. Berger: Deposit.

Senator Hollingsworth: All right.

The Special Master: Did I understand Mr. Bullitt to say on the cross entry it says "legal expenses"?

Mr. Bullitt: Yes, it says "Legal expense, Missouri impounded premium deposit."

Q.118. (By Senator Hollingsworth) In November, 1936, you did hear from Mr. Street, didn't you? A. That is apparently—I don't recall seeing this letter. It was handled by our cashier, our chief accountant.

Q.119. I call your attention now to this letter, "Check to C. R. Street, Agent." A. 296075.

Q.120. "Security Insurance Account, Missouri impounded premium deposit." A. Yes, sir.

Q.121. Then thereafter I note this notation, "Changed by C. E. Nov. 1936, to 'Legal Expense' at suggestion of Mr. C. R. Street in his letter of 11-9-36 to Mr. Powrie." A. Yes.

Q.122. You remember that now? A. I can't say that I remember it, no. It went through our office, but I don't remember the transaction. I don't know where I was in May, 1936. You see, this is ordered by W. E. W. He is our chief accountant.

Q.123. I understood you to testify, Mr. Williams—I don't want to misquote you—that at the time you got this letter in which he asked you to send him a check

for 5 per cent, you assumed it was legal expenses. Did I quote you correctly on that? A. I think so.

Q.124. Why didn't you charge it as legal expenses at the time? A. It was charged up—our bookkeeping on this Missouri litigation, we credited to the Missouri impounded premium account 10 per cent of all premiums collected in Missouri, and we refunded that, re-remitted that 10 per cent to the custodian of the federal court. That was the way it appeared on our books, and we ran an account with each agent so that the commissions could be figured when the matter was eventually disposed of, so that everything in connection with the Missouri impounded premiums were charged against the Missouri impounded premium account.

Q.125. Why did you change it then at Mr. Street's suggestion? A. That I can't answer. I say, I don't recall seeing that letter, may have, but I don't recall it.

Q.126. How was Mr. Street's suggestion made? I believe it was in a letter to Mr. Powrie. A. I presume that it was too.

(Letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 14, EFM.")

Q.127. I show you Defendants' Exhibit 14 and ask you to state if that is the letter to Mr. Powrie which caused you to make the change. It is dated November 9, 1936. A. Well, apparently it has been through our office. I am not sure that I saw it, but it refers to a matter of accounting. We were approaching the end of the year. It was a question of what we should do with the 20 per cent, as I would judge by that.

Senator Hollingsworth: We offer in evidence Defendants' Exhibit 14.

The Special Master: Let me ask you something. What about those letters and documents that you examined?

Mr. Bullitt: The fourth paragraph.

The Special Master: The reason I am asking, the examination standing by itself was very sketchy indeed, but in connection with those instruments—I want to know whether they were in evidence.

Senator Hollingsworth: If I haven't offered them, I do now offer Defendants' Exhibits 12, 13, 10, 11 and 14.

(Which said Defendants' Exhibits 10, 11, 12, 13 and 14, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

WESTERN DEPARTMENT
CHICAGO

Great American Insurance Company New York

81

C R STREET
VICE PRESIDENT

G D GREGORY
SECRETARY

CHICAGO March 17, 1926.

Mr. Walter D. Williams, Manager,
Rockford, Ill.

Dear Sir:

Enclosed are two checks to the order of the Security and the East and West, representing 11% of the amount of your Missouri impounded premiums as of May 1st last.

Yours very truly,

C R Street

Direct
Mo Imp Prem Deposit
Security 651365
Equw 2865 63

Sec V 651365
Equw V 2865 63

RECEIVED,
MAR 23 1926
EXT ___ OK ___
M.O. ___ EX.O. ___
CY. ___ REG. ___

d 10

[redacted]

82

WESTERN DEPARTMENT
311 SOUTH MICHIGAN AVENUE
POST OFFICE BOX 758
CHICAGO

Great American Insurance Company New York

C.R. STREET
Vice President

G.D. GREGORY
Secretary

CHICAGO March 17, 1936.

Dear Walter:

Regarding the official enclosure - was in New York last week and arranged with the "big boys" down there for the handling of this proposition.

After using these checks, please send me your check to my order as Agent for 5% of the amount of your impounded premiums as of May 1st last.

Will give you full details later.

All will do the same thing.

Yours very truly,

C.R. Street

Mr. Walter D. Williams, Manager,
Rockford, Ill.

"Agent"

Ck to C.R. Street, Agent 246.75
SECURITY INSURANCE CO.
Account 5% to Imp Accn Deposit
Approved by [illegible]
Ordered Paid by [illegible]
Date Paid MAR 28 1936
Check Number 140006
5% Imp Accn to May 1st 1935

Stamped by C.R. Street 11/16/36 to be paid to C.R. Street or to his order

Ck to C.R. Street, Agent 1302.56
EAST & WEST INSURANCE CO.
Account 5% Imp Accn Deposit
Approved by [illegible]
Ordered Paid by [illegible]
Date Paid MAR 03 1936
Check Number 14625
5% Imp Accn to May 1st 1935

Security Insurance Company
OF NEW HAVEN, CONNECTICUT
AGENCY DEPARTMENT

No 140006

ROCKFORD, ILL. MAR 23 1936

PAY TO THE ORDER OF E. P. Strutt, Agent

EXACTLY $2960 & 75 CTS. DOLLARS

THIS CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS SHOWN BELOW. ACCEPTANCE BY INDORSEMENT CONSTITUTES A SETTLEMENT IN FULL. IF INCORRECT, RETURN THIS CHECK.

TO THE THIRD NATIONAL BANK, ROCKFORD, ILL.

70-40 COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF CHICAGO

COUNTERSIGNED

MANAGER

5C6

PAY TO THE ORDER OF ANY BANK OR BANKER PRIOR ENDORSEMENTS GUARANTEED

MAR 24 1936

FEDERAL RESERVE BANK OF CHICAGO

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

WESTERN DEPARTMENT

Greenwood Wells

Nº 14525

ROCKFORD, ILL. MAR 23 1936

PAY TO THE ORDER OF [illegible] $1302.56

EXACTLY $1302 & 56 CTS

THIS CHECK IS IN FULL SETTLEMENT OF ACCOUNT AS SHOWN BELOW. ACCEPTANCE OF THIS VOUCHER CONSTITUTES RECEIPT IN FULL IF INCORRECT, RETURN THE CHECK

[illegible]

TO THE THIRD NATIONAL BANK, 70-40 ROCKFORD, ILL.

COLLECTIBLE AT PAR THROUGH THE FEDERAL RESERVE BANK OF CHICAGO

COUNTERSIGNED

CASHIER

[illegible] agent

FOR DEPOSIT IN THE CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

PAY TO THE ORDER OF ANY BANK OR BANKER PRIOR ENDORSEMENTS GUARANTEED MAR 24 1936 FEDERAL RESERVE BANK OF CHICAGO 2-30

1506

Exhibit #V

November 9, 1936

Mr. Powrie:

MISSOURI

The companies have been paid 61% of their impounded premiums in cash, and if we can cut off the lawyers, who, however, show no disposition to let go of a good thing and little disposition to really compromise, we should be able to return to the companies about 9% additional in cash, or 70% in all.

Under court order the only distribution which has been made was out of impoundments down to May 1, 1935. In the fullness of time companies will receive 50% on the impoundments subsequent to May 1, 1935, but when this will be paid I do not know, nor, for that matter, does anyone else.

On these impoundments, May 1, 1935, until November, the companies will not receive in the end in excess of 55% as against 70% on previous impoundings. This is for the reason that the assured under the settlement receives a refund of one-third of 16-2/3% May 1, 1935, to November, whereas prior to May 1, 1935, the assured receives only 20% of 16-2/3%.

As to expenses I do not know what to say, nor, for that matter, will anybody else. It is my intention in this office to charge back to the State of Missouri in our Tax Returns for this year the 20% to be returned to policy holders on the early impoundings and one-third of the impoundings subsequent to May 1, 1935, as return premiums, which is an entirely legitimate proposition; to charge about 5% of our total impoundings to legal expense and to charge off anything that is left in the end as uncollectable premiums, the same as agents' balances not collected.

Before we went into this settlement special care was exercised to see that our attorneys approved a disposition of the case along the lines of the settlement as later made. They seemed really enthusiastic at the time and promised all sorts of co-operation, but I must say that later on their general disposition has been to delay in order that additional fees may be claimed - it is particularly unfortunate for us that this case has represented 99% of Mr. Polonie's practice during the five years prior to the time the settlement was agreed upon.

[redacted]

Mr. Bullitt: Mr. Master, I just want to read this one out of this paper written by Street to the Security Company on November 9th, this paragraph.

The Special Master: We are just now talking about the previous ones. You are now referring to what he has just asked this witness?

Mr. Bullitt: Yes.

The Special Master: Go ahead.

Mr. Bullitt: "As to expenses I do not know what to say, nor, for that matter, will anybody else. It is my intention in this office to charge back to the State of Missouri in our tax returns for this year the 20 per cent to be returned to policyholders on the early impoundings and one-third of the impoundings subsequent to May 1, 1935, as returned premiums, which is an entirely legitimate proposition; to charge about 5 per cent of our total impoundings to legal expense and to charge off anything that is left in the end as uncollectible premiums, the same as agents' balances not collected."

The Special Master: Who wrote that letter?

Mr. Bullitt: Mr. Street wrote that to the Security, to Mr. Powrie, and he sent us a copy of it. Who is Powrie?

Mr. Berger: He was with the Fire Association.

Mr. Bullitt: That was written to Mr. Powrie, but passed on to the Security.

The Special Master: It evidently got into the hands of this company because they have made an entry that they made that change according to his suggestion.

(Letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 15, EFM.")

Q.128. (By Senator Hollingsworth) Now, I hand you Defendants' Exhibit 15 and ask you to state if that is your letter transmitting those checks to Mr. Street. A. Yes.

Senator Hollingsworth: We offer in evidence Defendants' Exhibit 15.

The Special Master: Just this one letter that you offer?

Senator Hollingsworth: I am offering all of them.

(Which said Defendants' Exhibit 15, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

March 23, 1936

Mr. Charles R. Street
Great American Ins. Co.
310 South Michigan Ave.
Chicago, Illinois

My dear Charlie:-

I am enclosing checks as follows:-

SecurityInsurance Company	$2960.75
East and West Insurance Company	1302.56

These represent 5% of the impounded premiums of each Company to May 1, 1935

Yours very truly,

FAC

Manager.

D-15

DEFENDANTS' EX. 15, ETC.

Mr. Berger: This may be a little out of time, Mr. Barnett, but there was a statement made by counsel a little while ago in asking Mr. Williams the question about this distribution of 11 per cent, in which counsel made the statement in asking him whether all of the attorneys' fees had been paid by the trustees before the 11 per cent had been distributed, which is not the fact.

Mr. Bullitt: That is the reason, Mr. Master—I do not want to be too meticulous—but the reason that I object to the gentleman, instead of asking questions, he puts them in the questions, because he made the clear statement that at the time this witness paid this money, that already the legal expenses had been paid, and consequently there wasn't any reason for him paying any more money, where, as a matter of fact, at the time Mr. Williams' company paid this money, they hadn't paid a whole lot of these things, attorneys' fees, $20,000.00 and $50,000.00 and $150,000.00 and $40,000.00, huge amounts of attorneys' fees had not been paid at the time he collected this 5 per cent back, or some $4,000.00.

The Special Master: I am trying to catch the full purport, and if that is an important distinction, I want to catch it. It is all a question of examining interested witnesses to see whether by their testimony they can prove knowledge. Now, if it is true that he paid this out and then afterwards these were paid—wasn't this man on the committee?

Senator Hollingsworth: Yes.

The Special Master: If, as a matter of fact, he knew that this contract was made out of which to pay it, and it was a huge amount for that purpose, the distinction may have significance. I don't catch it and I want you to put me straight. I don't see what difference it makes. If this man knew that a contract had been made to put up a tremendous amount of money that was lower than anybody could possibly believe would be necessary to pay attorneys' fees, and then this comes not out of that fund but something extra, what difference does it make whether they were, in fact, paid or whether they had been provided for? If there is a distinction I want to catch it so that I won't be misled.

Mr. Bullitt: It is perfectly legitimate argument for the gentleman to make by way of argument, that Mr. Williams, knowing there was two million and some dollars up for expenses, might have said, "Why do I have to put any more up?" I think that is a perfectly legiti-

mate argument. But the question I object to is when he says, "But, Mr. Williams, you knew all of the lawyers' fees had been paid. Why were you paying some more?"

The Special Master: That is right.

Mr. Bullitt: Now, the lawyers' fees hadn't been paid.

The Special Master: That might be a loose statement, but it couldn't possibly mislead anybody. There is the contract and we see what it was.

Mr. Bullitt: It misled me.

The Special Master: It didn't mislead me.

Mr. Bullitt: Did you know the fees had not been paid?

The Special Master: I assumed they didn't all get paid until all the lawyers got through with everything they had to do, but from this man's standpoint, when he approved the contract that took care of it so far as he is concerned, and provided a fund for it, then, as far as he is concerned, in effect, they were paid. Now, I am just telling you that, because if I am overlooking a distinction that is important, I would like to have you develop it.

Mr. Bullitt: It will come up later.

Mr. Berger: If your Honor please, I think you have made a little strong interpretation of the trust agreement. I don't think that the trust agreement says it necessarily provides a fund. It says it shall be held for that purpose upon voting and approval by the Subscribers' Actuarial Committee of the items.

The Special Master: Yes.

Mr. Berger: In other words, the trustees paid nothing out except at the direction of the committee.

The Special Master: Were you a member of that committee?

A. Of the Subscribers' Committee? Yes.

Mr. Berger: They had paid 11 per cent to the companies. The committee voted that.

The Special Master: Well, I tell you. I believe I understood what happened and I believe I understood these questions and the looseness of the language hasn't misled me. I honestly believe that. He does once in a while lapse and not technically describe the situation exactly, but I don't believe it has misled me.

Mr. Berger: The 11 per cent they took out took $1,000,000.00 out of the fund.

The Special Master: I know.

Q.129. (By Senator Hollingsworth) Now, at the time you made this remittance as shown by your letter of March 23rd, you simply enclosed Mr. Street the checks without any comments, said, "These represent 5 per cent of the impounded premiums of each company to May 1, 1935"? A. Yes.

Q.130. Of course, you knew, didn't you, Mr. Williams, that all of the other companies were being called on for a similar amount? A. I didn't. I may have assumed it. I didn't know it.

Q.131. You assumed that you were bearing your proportion? A. Isn't there some reference there to where all of the other companies are being called upon in the same way, or something of that character?

Q.132. As a matter of fact, Mr. Street's letter said to you "All will do the same thing." A. Yes.

Q.133. So you understood it. So you knew that that amounted to some $450,000.00 if all of them paid their 5 per cent. A.. How is that?

Q.134. You knew that the total funds which would come to Mr. Street would amount to some $450,000.00? A. Possibly. Mathematically that may be true, yes.

Q.135. You were naturally curious as to what that was about? A. No.

Q.136. Not in the least? A. No.

Q.137. Never had any curiosity at all? A. No, sir.

Q.138. You never made any inquiry of Mr. Street or any other person? A. No, sir.

Q.139. You are responsible for the expenditures and the disbursements and the profits that the Western Department makes, aren't you? A. Yes, sir.

Q.140. Did you report to your home office anything about it? A. Only in the regular course of business as it appeared on our trial balance that we sent to the home office every month.

Q.141. Did you write the home office about it? A. No.

Q.142. Now, you sent the home office simply a trial balance sheet? A. Yes, sir.

Q.143. And that showed that you had returned back to C. R. Street as agent, 5 per cent of your portion of the impounded funds? A. Yes, sir.

Q.144. Did the home office ask you what it was about? A. No, sir.

Q.145. Have they asked you about it to this day? A. No, sir.

Q.146. It does all appear mysterious, doesn't it? A. Beg pardon?

Q.147. It does appear mysterious, doesn't it? A. It didn't at the time; at least, it didn't to me, knowing Mr. Street and the relationship and the acquaintance running back over a great many years.

Q.148. After you sent Mr. Street this $4,200.00 that was in 1936, you did see him frequently, didn't you? A. Not, as I tried to tell you, not so much. You see, I was commuting between Rockford and New Haven every other week.

Q.149. How often did you attend committee meetings of the Actuarial Committee? A. Very infrequently after I commenced this commuting. It was very infrequent. Finally I resigned because I couldn't attend.

Q.150. You can't say whether you ever saw him from that time on? A. I know I did see him, but I can't fix right—

Q.151. (Interrupting) Was this Missouri rate litigation mentioned? A. It might have been, but not specifically or not so as to make an impression on my mind.

Q.152. You never asked him? A. You could hardly get two insurance people together of late without mentioning the Missouri litigation.

Q.153. But you never asked Mr. Street, although he had told you that he would tell you about it later. Who are the "big boys" that he mentions in his letter? A. He didn't identify them. He said he went down—

Q.154. (Interrupting) Whom did you presume he meant? A. I presumed they were the companies in New York and Hartford to whom he went.

Q.155. Did you understand it to mean one of your companies? A. No. We were not one.

Q.156. Why would the "big boys" have anything to do with an expenditure that affected your company? A. I can't answer that. "Big boys," I presume, refer to, as in the parlance of the business, it is the important companies in the business. We don't qualify in that.

Q.157. Have you ever paid out any money to this extent because the "big boys" in New York agreed to a proposition that you didn't know what it was before this? A. I didn't find out that we agreed to anything that the "big boys" did. We paid 5 per cent.

Q.158. Regarding the official enclosure, do you know why he sent you this separate letter instead of just writing it in the letter in which he sent you the checks? A. No, I don't.

Q.159. Was there anything secret about it? A. No, not as far as I was concerned.

Q.160. Did that make any impression on you? A. No.

Q.161. That at the time he sent you this letter he would send you a separate letter addressed to "Dear Walter," in which he referred to his original letter as "official" and made this statement: "Regarding the official enclosure, was in New York last week and arranged with the big boys down there for the handling of this proposition. After using these checks, please send me your check to my order as agent for 5 per cent of the amount of your impounded premiums as of May 1st." Why did you pay attention to what the "big boys" arranged? A. I didn't pay attention.

Q.162. Why, you sent him a check? A. I sent him a check. He sent us the remittance of 11 per cent and told us to return 5 per cent drawn to his order as agent.

Q.163. Did the fact of the "big boys" have anything to do with it? A. No, not at all, and I didn't know what any agreement was with the "big boys."

Q.164. You just charged it to the Missouri impounded premium? A. Yes, sir.

The Special Master: Did it occur to you that if some Superintendent of Insurance might examine your books, he might want to know what that entry was for?

A. No, it didn't, because the entries show for themselves. The record is clear.

The Special Master: Well, it wasn't clear to you. You didn't have any idea what it was.

A. I mean the disbursement was made; the records show for themselves. You mean what the money was for?

The Special Master: Yes, did it occur to you if some Superintendent of Insurance should examine the books and want to know if that was a legitimate entry that he might ask you what that money represented?

A. No, it never occurred to me.

The Special Master: You never thought about it?

A. No.

The Special Master: They do ask those questions sometimes?

A. Occasionally if it is anything—We have never had that occasion arise. No Insurance Commissioner has ever questioned any transactions with us.

The Special Master: Isn't that because your entries usually show what they are for?

A. Exactly.

Q.165. (By Senator Hollingsworth) When you got this check on March 17th and you sent out your check on March 23rd, when did you report that to your home office? A. We didn't report the transaction to the home office except as it appears in—you say it is March?

Q.166. Yes. A. It appeared in our trial balance for March, like any other disbursement we would make.

Q.167. All right, you weren't carrying it at that time as a legal expense, were you? A. It was charged to the impounded premiums, Missouri impounded premiums.

Q.168. Now, you made no other explanation to your company? A. No, sir.

Q.169. And they got that in April in ordinary course? A. Yes, sir.

Q.170. And no question was asked? A. No, sir.

The Special Master: Did you get a request from the auditor at the home office to explain what that was?

A. No.

The Special Master: It wasn't criticized?

A. No, sir.

Q.171. (By Senator Hollingsworth) Have you ever disbursed any money out of this account where you didn't have an exact entry as to what it was for before? A. We had Mr. Street's voucher and that was all that we had. We sent out—I don't know as I can answer your question, Mr. Hollingsworth. When we disbursed funds?

Q.172. For this Missouri litigation didn't you, prior to this time, didn't you? A. I don't think so. I don't recall.

Q.173. Sir? A. I don't recall that we did.

The Special Master: No, they paid assessments assessed by the rating bureau for various expenses.

Q.174. (By Senator Hollingsworth) When you would get an assessment from the rating bureau that had anything to do with any expenditure for the Missouri litigation, there would be a statement of what the items were and what they were for, wouldn't there? A. These assessments, as I recall it, came from the Missouri Inspection Bureau. They were made by the Missouri Inspection Bureau.

The Special Master: That is the Missouri rating bureau?

A. I don't recall. There may have been a statement, but I don't recall.

Q.175. (By Senator Hollingsworth) And you paid it solely because C. R. Street ordered you to or requested you to do that? A. Yes.

Q.176. Have you ever disbursed $4,200.00 in money before this one voucher that you didn't know what it was for? A. No, and again I refer to Mr. Street. If Mr. Street had asked me for my shirt and told me he would tell me about it later, I would give it to him.

The Special Master: Would you give him your company's shirt?

A. Yes, in the same way.

The Special Master: It wouldn't occur to you that however sincere he might be that you might differ in opinion with him as to whether that was the proper thing for your company to pay and there was no reason why you should use your judgment as an officer of the company in passing on the thing at all?

A. That is rather an involved question. Will you say that again?

The Special Master: Read it to him. (Question read.) Is that too long for you to answer?

A. Well, if I got the gist of it, and I think maybe I have, my confidence in Mr. Street was absolute. If Mr. Street would ask me to do a thing, sometimes I might not agree with him, but I would do it still.

The Special Master: Even though it involved your company's money?

A. Even though it involved my company's money, because I had absolute confidence in his integrity and his ability.

Q.177. (By Senator Hollingsworth) Did you make a separate report to the East and West or was that all sent to one office? A. It is all sent to one office.

Q.178. Now, who is E. A. S. A. E. A. Shearer. He was our chief accountant in the western department. After the first of May we moved largely most of our transaction to the home office at New Haven and he has been transferred since.

Q.179. Now, this Defendants' Exhibit 14 is on a sheet of paper and there is no ending or anything to it. Will you have the original of that memorandum in your files? A. Well, I can't answer that. I presume we have,

but I can't answer that. These photostatic copies were all made from original copies in our office.

Q.180. Mr. Williams, could you send here through your attorneys, Mr. Berger—

Mr. Berger (Interrupting): Yes.

Senator Hollingsworth: I am asking Mr. Williams to send through you gentlemen the original of this Powrie memorandum dated November 9, 1936.

Mr. Berger: Mr. Powrie is out here with it in his pocket.

Senator Hollingsworth: All right, that will be all right.

Judge Henson: There is one sheet here.

Mr. Berger: That is all there is. The original has a signature, but this is a carbon copy of the original. That is a carbon copy. In other words, a carbon copy of Mr. Powrie's letter was given to the Security. Mr. Powrie has the original of it out here in his pocket. I anticipated you would want it, and had him here with it in his pocket.

Q.181. (By Senator Hollingsworth) You have since learned through the press, have you not, or gotten information to the effect, regardless of whether it is true, that over $400,000.00 of this money was used for an unlawful purpose? A. Yes, sir.

Q.182. Have you made any inquiry to this date to find out whether any part of this $4,200.00 that you sent went for that purpose? A. No, sir.

Q.183. You have not? A. No, sir.

Q.184. Aren't you interested to that extent? A. I don't know how to answer that.

Q.185. Just the fact. A. We are only one of—ours is a very small toad in this puddle.

Q.186. This $4,200.00? A. A $4,200.00 toad in a $400,000.00 puddle, as I understood it.

Q.187. So the $4,200.00, naturally you don't question the fact now that it was used improperly, do you? A. Oh, I can't pass on that at all.

Q.188. You don't answer that. But you haven't been interested enough to try to learn? A. That isn't a fair statement either, but I am not in a position to learn.

Q.189. Well, have you made any effort? A. No.

Q.190. Have you consulted with anybody in the insurance world to learn whether or not that is true? A. What is true, that this money was improperly used?

Q.191. Yes. A. No.

Q.192. And to this day you have never made inquiry from any person as to what this $4,200.00 was for? A. No.

Q.193. And have never known? A. No, excepting as it appears on our records.

Mr. Berger: Street is dead.

Senator Hollingsworth: Well, the others aren't dead.

Mr. Berger: You wouldn't expect him to go to the federal penitentiary to ask.

Cross Examination by Mr. Bullitt.

XQ.194. The fact is that Mr. Street sent you for your two companies about $9,379.00 and asked you to send back to him a little over $4,000.00 and he would furnish you details later? A. Yes, sir.

XQ.195. You just did it? A. Yes.

XQ.196. He sent you the money and asked for it back and you gave it to him? A. That is right.

XQ.197. And Street is dead? A. Yes, sir.

XQ.198. When did you first learn that there was any question of a supposed unlawful and fraudulent use of any of this money? A. Oh, within—when they commenced stirring up the federal grand jury.

XQ.199. Yes, this spring in 1939? A. Yes, sir.

XQ.200. You knew that the federal government and the state government were both investigating to find out what had happened to the money? A. Yes.

Mr. Bullitt: All right, that is all.

Re-Direct Examination by Senator Hollingsworth.

RDQ.201. When did Mr. Street die, in February, 1938? A. Something about that, I think so. I was in New Haven at the time.

Mr. Berger: February 1, 1938.

RDQ.202. (By Senator Hollingsworth) The committee met numerous times after you had received this Street letter, did it not? A. The committee? Yes, the committee has.

RDQ.203. You attended those meetings? A. No, I can't—you will have to refer to the minutes on that because my attendance at those committee meetings was very infrequent because of the commuting I had to do.

RDQ.204. But you would recall whether or not this item of 5 per cent, $450,000.00 total expenditure was discussed in the committee? A. It wasn't, as far as I know.

RDQ.205. Never mentioned? A. No.

RDQ.206. Either before or after Mr. Street's death? A. No, not as far as I know.

RDQ.207. And hasn't been mentioned to this date? A. I can't tell you. I haven't been on the committee since 1937.

RDQ.208. Well, since 1937? A. I went off in 1937, and I say my attendance at meetings was very infrequent after 1935 because I don't think I attended over a couple of meetings up to the time; I resigned because I couldn't attend them.

Senator Hollingsworth: That is all.

(Witness excused.)

RUSSELL D. HOBBS, recalled as a witness on behalf of the defendants, having been previously duly sworn, testified further as follows:

Direct Examination (continued) by Judge Henson.

Q.75. Recalling, Mr. Hobbs, since you were last on the stand, have you had such copies of the minutes of the Actuarial Committee of 1935 and 1936 copied to be used as exhibits as I have designated? A. I have.

Q.76. I wish you would take February 1, 1935. A. February 8, 1935, don't you mean?

Q.77. Yes, February 8th. Let me have that, will you?

(Said copy of minutes, handed to the reporter, was marked for identification as "Defendants' Exhibit 16, EFM.")

Q.78. Now, I show you Defendants' Exhibit 16 and will ask you if that states who were present at the meeting and whether that states all that occurred with reference to the Missouri rate litigation? A. It does.

Judge Henson: All right, we introduce that.

(Which said Defendants' Exhibit 16, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 16.

Meeting of Committee February 8, 1935

Present: Messrs. Street, Bell, Harding, Henne, Williams and Koeckert; Parker.

Missouri:

(a) Reports of Attorney Folonie on progress of the Missouri litigation.

(b) Chairman Street's correspondence with Chambers of Commerce and Company Executives.

(c) Miscellaneous correspondence and newspaper clippings.

No action taken."

Q.79. (By Judge Henson) Let's have March 19, 1935.

(Said copy of minutes, handed to the reporter, were marked for identification as "Defendants' Exhibit 17, EFM.")

Q.80. I show you Exhibit 17 and will ask you if that is a copy of the minutes showing who was present at the Actuarial Committee meeting of that date, and if the copy there is all the minutes there are of the transactions on that date by the Actuarial Committee relating to the Missouri rate litigation? A. That is correct.

Judge Henson: I wish to introduce that.

(Which said Defendants' Exhibit 17, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 17.

Meeting of Committee March 19, 1935

Present: Street, Clark, Bell, Harding and Henne; Parker

Missouri:

Miscellaneous correspondence: Referred to generally.

Custodian's Account: Referred to.

Letters to Companies touching on Commissions: Referred to.

Correspondence which the Chairman had with Chambers of Commerce. Referred to.

Letters from Attorney Folonie Reporting Progress of Litigation. Referred to.

After referring to the above subjects in a general way the Chairman explained at length the correspondence he had on this litigation, as well as those which he expected to have in the near future.

It was voted the sense of the meeting that the Chairman be authorized to proceed with the conferences in the manner outlined during the discussion and report back to the committee at a future meeting the results of such further conferences. In other words, the conferences which he had had were approved, and he was requested to proceed with those contemplated 'with power.'"

Judge Henson: Now, the next one. The next one is July 9th.

(Said copy of minutes, handed to the reporter, was marked for identification as "Defendants' Exhibit 18, EFM.")

Q.81. I show you Exhibit 18 and ask you whether that is a copy of the minutes of the Actuarial Committee of July 9, 1935, a true copy of the minutes, showing who was present and what occurred and if all that occurred shows on the minutes respecting Missouri rate litigation? A. That is true.

Judge Henson: I wish to introduce that.

(Which said Defendants' Exhibit 18, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 18.

Meeting of July 9th, 1935

Present: Messrs. Street, Bell, Henne, Koackert, Harding and Williams; Parker.

Missouri:

Reports of Attorney Folonie on Progress of Case: The reports received from Attorney Folonie from time to time on the progress of the settlement negotiations were presented in detail, and his report of July 6th was read by the Chairman, following which the Chairman explained some of the ramifications of this controversy and

asked for the continued support of the committee in handling this matter.

After discussion it was voted the sense of the meeting that the Chairman be authorized to continue to conduct these negotiations along whatever lines seem expedient.

Memorandum of Proposed Settlement:

The Chairman referred to the advertisement that had been run by the Kansas City Fire and Marine Ins. Co. endorsing the settlement, that had been authorized by him, and stating that he had assumed the expense of same. His action was approved.

The same applies in the case of the Springfield Agents who had the Kansas City article published in their papers.

The question of running ads in the St. Louis papers proposed by Mr. Mahan was then referred to and the Chairman reported he had advised against the same at the present time. This was noted and approved.

The proposal from Wallace Rogers was referred to and again the Chairman recommended against any action along this line at the present time. His recommendation was approved.

The proposal of the St. Louis agents to run articles along this line was referred to and the Chairman advised that this proposal had been abandoned.

Newspaper Articles noted."

Q.82. (By Judge Henson) This Exhibit 18 refers to reports received from Folonie and then it refers particularly to his report of July 6th that was read by the chairman. Now, have you been able to find that report of Folonie referred to in that memorandum? A. I have not.

Q.83. You have made diligent search for it? A. Yes, sir, I have.

Q.84. All right. Now, the Exhibit 18 there in about the center of the page says, "Memorandum of Proposed Settlement." Have you been able to find that memorandum of proposed settlement, Missouri rate cases? A. I have not.

Q.85. Have you searched diligently through your files? A. I have.

Q.86. You don't find it. You are the only custodian of the files? A. I am the custodian.

Mr. Berger: What is the date of that?

Judge Henson: July 9, 1935.

Take the next one, which is October 1st.

General Bullitt: Was that before or after the agreement of May 18th?

Judge Henson: July 9th would be after.

General Bullitt: Two months after the whole agreement was done?

Judge Henson: Yes. October 1, 1935.

(Said copy of minutes, handed to the reporter, was marked for identification as "Defendants' Exhibit 19, EFM.")

Q.87. (By Judge Henson) I show you Exhibit 19 and will ask you if that shows from the minutes and is a true copy of the minutes showing who was present at the Actuarial Committee on October 1st, and if the wording on there is all the record there is of that date of the transactions referring to the Missouri rate litigation. A. That is correct.

Judge Henson: I wish to introduce that.

(Which said Defendants' Exhibit 19, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 19.

Meeting of October 1, 1935

Present: Street, Henne, Harding, Clark, Williams; Parker.

Missouri:

The file of correspondence on the Missouri litigation was presented and noted. The report of Attorney Folonie dated the 30th was read to the committee and noted."

Judge Henson: November 27, 1935.

A. Just a minute so I may check something here. This is one, Mr. Henson, in two parts.

Judge Henson: Put two different exhibit numbers on them then.

A. That is the one you saw before.

Judge Henson: We had better have the long one first, if it comes in chronological order.

A. I wanted to point out the fact that there is a difference in those present. My name should appear here (indicating) as well as there (indicating).

Q.88. What does the record show? A. The record shows I was there, and it shows on that one (indicating), you see.

(Said copies of minutes, handed to the reporter, were marked for identification as "Defendants' Exhibits 20 and 21, EFM.")

Q.89. I show you the two exhibits, 20 and 21, both of which refer to a meeting on November 27, 1935, of the Committee. Do these properly show who were present at the meetings? A. Yes, except that the one referring to attorneys' bills should also have my name included.

Q.90. That is No. 20? A. No. 20.

Q.91. 20 should show you present at the top and doesn't? A. Yes.

Q.92. Now, the matter following that, is that a true copy of all there was at that meeting regarding the Missouri rate litigation with the exception of this next exhibit? A. That is correct.

Judge Henson: I will introduce 20.

(Which said Defendants' Exhibit 20, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 20.

Meeting of November 27, 1935

Present: Messrs. Street, Williams, Harding, Bell, Clark and Henne

Missouri Attorneys' Bills: The Chairman outlined the request received from the attorneys for a substantial payment on the outstanding bills in Missouri which was desired at this time largely to ease their burden in connection with the Federal Income Tax and because of the tax problems arising out of the settlement of the estate of Mr. Hicks. It has been suggested that a special assessment be run by the Missouri Inspection Bureau to raise sufficient funds to liquidate the present outstanding bills amounting to approximately $300,000. However, it was the concensus that it would not be advisable or practicable at this time to run a special assessment.

It was suggested to Manager Terry of the Missouri Inspection Bureau that he endeavor to secure a loan from one of the St. Louis banks in such an amount as would enable him to pay the firm of Hicks & Folonie a goodly portion of the back bills now due. Manager Terry reports that he can secure a loan of $150,000. from the Mercantile-Commerce Bank and Trust Company of St. Louis on a three months note, subject to renewal; note to be endorsed by Mr. P. W. Terry as Manager, and personally, and also by C. R. Street, Agent for Companies, and personally.

Following a general discussion, the following resolution was offered and unanimously adopted:

Resolved That C. R. Street, as Agent for Companies, and personally, and P. W. Terry, as Manager, and personally, he and they are hereby authorized and empowered to sign and endorse the note required by the Mercantile-Commerce Bank and Trust Company of St. Louis for $150,000. being borrowed by the Missouri Inspection Bureau for the purpose of liquidating a substantial part of the outstanding attorneys' bills incurred in connection with the rate litigation involving the fire insurance companies in whose behalf Mr. P. W. Terry, as Manager of the Missouri Inspection Bureau, maintains their public rating record, and to likewise sign and endorse renewal of such said note or notes as may be required by the bank until same has been entirely paid up, and be it further resolved that inasmuch as this money is being borrowed for the purpose of liquidating a debt incurred by the Missouri Inspection Bureau on behalf of all companies, and inasmuch as the signatures and endorsements of C. R. Street and P. W. Terry are necessary, in order to protect the interests of the companies, it is understood and agreed that the companies in whose behalf C. R. Street and P. W. Terry are endorsing said note, will protect them against any personal liability for their acts in this matter made on behalf of all companies."

Q.93. (By Judge Henson) Now, refer to 21. Does that correctly show at the same meeting of November 27th those who were present? A. Yes.

Q.94. And do you find the matter on there is a true copy from the minutes? A. It is.

Q.95. Was there anything else at that meeting of the committee on November 27th that you have not included in Exhibits 20 and 21? A. Not to my knowledge.

Mr. Berger: These aren't the full minutes of all those dates?

Judge Henson: No, I thought I would like to cover that.

We introduce Exhibit 21.

(Which said Defendants' Exhibit 21, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 21.

Minutes of November 27, 1935

Present: Street, Williams, Harding, Bell, Clark, Henne; Hobbs

Missouri:

Recent correspondence with the attorneys regarding the status of the litigation in Missouri was referred to but not read."

Q.96. (By Judge Henson) Now, does that include '36? A. Yes.

Q.97. April 8th, I believe, is the first one? A. Yes.

(Said minutes of meeting, handed to the reporter, were marked for identification as "Defendants' Exhibit 22, EFM.")

Q.98. I show you Exhibit 22—A. (Interrupting) Judge Henson, may I ask you to ask Mr. Gallagher if he had these checked back when they were copied?

Mr. Gallagher: Yes.

A. All of '36 you and I didn't check back on, you know, so I wanted to be sure.

Q.99. (By Judge Henson) Yes. All right. Now, this shows the minutes of the meeting of April 8, 1936. Does this Exhibit 22 properly show those members who were present on that date? A. It does.

Q.100. Does that exhibit there show all of the matters the committee handled respecting Missouri rate litigation? A. It does.

Q.101. Occurring at that meeting and on that date? A. It does.

Judge Henson: We introduce 22.

(Which said Defendants' Exhibit 22, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 22.

Meeting of April 8, 1936

Present: Street, Bell, Koeckert, Clark, Henne, Williams; Hobbs and Beckwith.

4. Missouri: Demand of Automobile Insurance Company that Manager Terry send new circular to their agents providing for the return of 20/21st instead of 34/35ths in the case of cancellation of policies written between the dates of May 1, 1935 and November 11, 1935.

The attention of the committee was called to the statements made to Manager Terry by Assistant Secretary Linde in his letter of March 24th to the effect 'we intend to hold your office responsible, as we cannot by any stretch of the imagination feel that the Committee handling this litigation would rule that you should not correct your own bulletin'; also that Manager Terry had in mind offering to send a bulletin only to the agents representing the Automobile Fire.

The Committee expressed the opinion that bulletins issued by the Bureau should be on behalf of all of their subscribers and not individual companies. The Committee did not seem to take the threat of the company seriously and the Chairman stated that he would discuss the situation with Vice President Stinson at White Sulphur Springs.

The regular meeting of the Committee adjourned at 4:15 P. M. following which the Committee went into Executive Session."

Judge Henson: Now, June 5, 1936.

(Said copy of minutes, handed to the reporter, was marked for identification as "Defendants' Exhibit 23, EFM.")

Q.102. I show you Exhibit 23 and ask you if that is a copy of the minutes of June 5, 1936, showing what transpired during the Missouri rate litigation. A. It is.

Q.103. Is that all that is shown in those minutes regarding the Missouri rate litigation? A. That is correct.

Judge Henson: We introduce Exhibit 23.

(Which said Defendants' Exhibit 23, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 23.

Meeting of June 5, 1936

Present: Street, Bell, Clark, Henne, Harding; Hobbs and Beckwith

14. *Missouri Rate Suit*: The recent report of counsel to the Chairman regarding the status of the litigation in Missouri was referred to but not read."

Judge Henson: October 23rd.

(Said copy of minutes, handed to the reporter, was marked for identification as "Defendants' Exhibit 24, EFM.")

Q.104. I show you Exhibit 24, minutes of meeting of October 23, 1936, and ask you if that exhibit shows who were present and all that the minutes show as having been done concerning the Missouri rate litigation at that meeting at that time. A. That is true.

Judge Henson: We introduce 24.

(Which said Defendants' Exhibit 24, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 24.

Meeting of October 23, 1936

Present: Street, Henne, Robertson, Koeckert, Harding, Williams and Bell; Beckwith and Hobbs.

16. *Missouri Rate Suit*:

The bills of Attorney Folonie and Attorney Morrison of Kansas City covering fees and expenses for the year 1935 in connection with the Missouri rate suit were presented by the Chairman, together with an outline of the amount paid in the past.

Following a general discussion, payment of the bills by the Trustees of the Special Fund was approved by Messrs. Harding and Koeckert. The signatures of two are required under the provisions of the trusteeship."

The Special Master: Before you get any further, let me ask the question. Exhibit 24 has this recital about attorneys' fees: "Following a general discussion, payment of the bills by the Trustees of the Special Fund was approved by Messrs. Harding and Koeckert. The signatures of two are required under the provisions of the trusteeship." What is the special fund and what is the trusteeship that was referred to?

A. That was the 30 per cent. That was the Street-Folonie trust fund, the money paid in the federal court.

The Special Master: I remember that they were trustees. Then it says, "Was approved by Messrs. Harding and Koeckert." Those are not trustees.

A. Yes, sir.

The Special Master: "The signatures of two are required." Two what?

A. Members of the committee.

The Special Master: All right. You mean of the committee of five?

A. The Subscribers' Actuarial Committee.

The Special Master: Yes.

Judge Henson: December 8th.

(Said copy of minutes, handed to the reporter, was marked for identification as "Defendants' Exhibit 25, EFM.")

Q.105. (By Judge Henson) I show you Exhibit 25 and will ask you if that is a true copy of the minutes of December 8, 1936, showing the members present and all that was done at that meeting respecting the Missouri rate litigation. A. That is correct.

Judge Henson: We introduce Exhibit 25.

(Which said Defendants' Exhibit 25, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 25.

Meeting of December 8, 1936

Present: Street, Henne, Bell, Robertson, Koeckert, Clark and Williams; Beckwith & Hobbs.

17. *Missouri Rate Suit - Recent Report of Attorneys*

The letter from Attorney Folonie referring to the developments in the past few months in the rate litigation in Missouri was referred to but not read."

Q.106. (By Judge Henson) Now, Mr. Hobbs, you have looked over all of these records covering both years 1935 and 1936. You have looked over the minutes of the Actuarial Committee with me, haven't you? A. Yes, sir.

Q.107. Do you find any other reference to the Missouri rate litigation in all those minutes than in these exhibits which you have just identified from 17 to 25? You can make the exception of that superior plan of September 3, 1936, if you care to. A. I seem to have a meeting of April 30, 1935, that you skipped.

Q.108. All right sir.

(Said copy of minutes, handed to the reporter, was marked for identification as "Defendants' Exhibit 26, EFM.")

Q.109. Then Exhibit 26, I will ask you if that shows the minutes of the meeting of April 30, 1935, the members present and all that was done at that meeting respecting the Missouri rate litigation? A. It does.

Judge Henson: We introduce Exhibit 26.

(Which said Defendants' Exhibit 26, so offered in evidence, having been previously duly marked is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 26.

Meeting of April 30, 1935

Present: Messrs. Street, Bell, Henne, Clark and Williams; Parker.

Missouri:

All the correspondence which the Chairman has had with various people, and the report of the attorney on the progress of the litigation, were submitted, noted and ordered passed to the file."

Q.110. (By Judge Henson) Now, then, will you answer my other question as to whether these Exhibits 17 to 26, both inclusive, are true copies of all of the minutes of this Actuarial Committee respecting the Missouri rate litigation? A. That is true.

Mr. Berger: As I understand, these are just excerpts from it?

Mr. Bullitt: Not the true copies of the minutes, but a mere true copy of certain extracts.

Judge Henson: I will admit now that these minutes show deals with various states and various matters, but we are just taking the Missouri feature of it, and he and I overlooked nothing. This is all that covers it.

The Special Master: The exhibits that you have purported to copy are references to the Missouri rate litigation?

Judge Henson: Yes, sir, and nothing else.

The Special Master: From the minutes of the Committee dealing with everything?

A. Yes, sir.

The Special Master: You are now asking were there any other references, so far as he knows?

Judge Henson: Yes, sir. I think he answered there were none.

The Special Master: Yes.

Judge Henson: I have just tried to put it in this form, your Honor, so these can be bundled together as an exhibit.

The Special Master: That is all right.

Judge Henson: Now, I think that is all, except I have arranged with Mr. Hobbs that I will want to go through both his correspondence files a little more carefully later and see them when we come back from New York, if need be.

(Witness excused.)

A. F. POWRIE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Please state your name. A. A. F. Powrie.

Q.2. What is your first name? A. Abraham.

Q.3. Where do you live? A. Park Ridge, Illinois, Cook County.

Q.4. That is a suburb of Chicago? A. That is a suburb of Chicago, yes.

Q.5. What is your association with the Fire Association of Philadelphia group of insurance companies? A. Manager of the western department.

Q.6. That includes the Fire Association of Philadelphia, the Lumbermen's, the Reliance and the Victory? A. The Victory is no longer in existence. The Victory was included with the Reliance several years ago.

Q.7. So it is the three? A. There is the Philadelphia National now. We have another company.

Q.8. Was the Philadelphia National involved in the Missouri rate litigation? A. No, it is not entered in Missouri.

Q.9. The three involved are Fire Association of Philadelphia, Lumbermen's and Reliance, and the Victory up until it was merged with the Reliance? A. Yes.

Q.10. Have you been manager of the western department for those companies during the time of this rate litigation? A. Well, I have been manager of the western department of those companies since 1923. I have just forgotten how far back the rate litigation extends.

Q.11. Do you hold any position in any of these committees or associations that had anything to do with any phase of this fire rate litigation? A. The handling of the rate cases or anything of that kind?

Q.12. Yes. A. No, sir.

Q.13. You were not a member of the Actuarial Committee? A. No.

Q.14. Your sole connection with it had to do with your management of the western department of these three companies? A. Yes, sir.

Q.15. Do you account to the home office of this company in Philadelphia? A. Yes.

Q.16. When did you first hear of any compromise of this rate litigation? A. Well, I don't remember the date.

Q.17. Did you know that a compromise was being negotiated prior to the time it was made? A. No, except that I knew that a compromise had been talked about for a long while, gossip that it would be compromised, that a compromise was being sought or being talked about. I knew nothing about it.

Q.18. Did you know anything about the negotiations as they went on? A. Oh, no, not at all.

Q.19. When did you first learn of the compromise? A. I don't remember the date.

Q.20. About the time or shortly after it was consummated? A. Yes.

Q.21. That would be in May of 1935, I believe it was signed May 18, 1935. A. Well, I don't remember the date.

Q.22. You received official notification, I presume, that it had been compromised and the terms of the com-

promise? A. No, I don't remember receiving any official notification.

Q.23. Did you receive any kind of notification that it had been compromised and learn the terms of the compromise? A. No, I don't think so. I think my first knowledge of the compromise was through the press.

Q.24. Through the press. Did you learn then—have you ever known anything about the terms of the compromise? A. No, except as to the returns to the policy-holders of the amount that was returned to the policy holders. I knew about that because we had to pay that. That went through our records and had to be paid back.

Q.25. That was 20 per cent? A. That was 20 per cent, I believe it was, yes.

Q.26. You knew that 50 per cent went out right to the companies? A. Whatever it was, yes; I think it was 50 per cent.

Q.27. Sir? A. I thought it was a little more than that. I am not certain as to the amount.

Q.28. Then you knew that 30 per cent was withheld for the benefit of the companies after the payment of expenses? A. Yes, I believe so.

Q.29. You knew the amount of the impounded premiums, the total amount, did you not? A. No, I don't believe I ever knew the total amount of impounded premiums.

Q.30. You knew your own amount, didn't you? A. Yes, I knew our amount.

Q.31. And those companies amounted to, as of May 1, 1935, $142,768.00? A. Something like that.

Q.32. Who is Mr. Lane? A. President of our company.

Q.33. O. E. Lane? A. President of our company.

Q.34. He resides at Philadelphia? A. Philadelphia, yes, sir.

(Letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 27, EFM".)

Q.35. I hand you Defendants' Exhibit 27, a letter dated March 12th, and signed "Manager." Did you write that letter? A. Yes, sir, I wrote that letter.

Senator Hollingsworth: We offer in evidence Defendants' Exhibit 27.

(Which said Defendants' Exhibit 27, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

COPY

March 12, 1936

O. E. Lane, President
Philadelphia

Dear Mr. Lane:

During your brief stay in Chicago last week I mentioned payment in bonds by the Custodian of a portion the return to companies Missouri impounded premiums - these bonds went direct to Home Office.

Tomorrow we will receive checks - Fire Association $4625.84, Lumbermen's $1928.10, Reliance $1254.82, Victory $757.35, representing a portion of the additional amounts due, which will not be entirely determined until final settlement is made with the Custodian.

Pending this final settlement it is necessary to use some money for expenses, just the nature of which I do not know, but am advancing to Mr. C. R. Street a check for $1712.82 for which we will have his receipt.

Am advising you of this transaction personally as until the final distribution and participation of expenses is made, the amount cannot be definitely allocated to the proper place of charge.

Am leaving Saturday for Hot Springs, Arkansas and will be at the Arlington Hotel for probably ten days or two weeks.

Sincerely yours,

Manager.

M.

D27

[redacted]

Senator Hollingsworth: I notice this letter reads as follows:

"During your brief stay in Chicago last week I mentioned payment in bonds by the custodian of a portion the return to companies, Missouri impounded premiums—these bonds went direct to the home office."

The Special Master: Is this the letter?

Senator Hollingsworth: This is the letter to O. E. Lane, President.

The Special Master: As president?

Senator Hollingsworth: "Tomorrow we will receive checks—Fire Association $4,625.84, Lumbermen's $1,-928.10, Reliance $1,254.82, Victory $757.35, representing a portion of the additional amounts due, which will not be entirely determined until final settlement is made with the custodian."

Now, does that refer to the breakdown of bonds that you received from the custodian, those checks?

A. Those checks, no, the bonds had gone to the home office. These were checks that we were to receive.

Q.36. From whom? A. From—I think they came from the Subscribers' Committee; I don't remember, from the trustees, or whoever was handling it, as a matter of fact.

Q.37. I want to ask you this: You at first got a check for 6 per cent, did you not? A. I don't remember the percentages, I am sure.

Q.38. Have you made any effort to find out since you knew you were going to be called as a witness in this case? A. No.

Q.39. You have not? A. It is all a matter of record. I understood the records were all here. Photostatic copies of all our records I understood were here.

Q.40. Well, to refresh your recollection, didn't you get 5 per cent of your impounded premiums first instead of 11 per cent? A. I don't remember the percentage.

Q.41. You don't remember? A. No.

Mr. Berger: There is no question about it, is there?

Judge Henson: There was 5 per cent added to the 6 per cent.

Mr. Berger: First were issued.

Q.42. (By Senator Hollingsworth) Did you receive 6 per cent and then 5 per cent, making a total of 11 per cent; do you remember that? A. I don't remember it as to the percentage at all.

Q.43. Then I note in this letter: "Pending this final settlement it is necessary to use some money for expenses, just the nature of which I do not know, but am advancing to Mr. C. R. Street a check for $1,712.82 for which we will have his receipt." A. Yes, sir, that is right.

Q.44. How did you learn that Mr. Street needed expense money? A. He called me on the telephone and asked me to send him a check for $1,712.00 and whatever it was.

Q.45. What did he tell you it was for? A. For expenses in the Missouri case.

Q.46. Did he tell you what purpose or anything? A. Not a word.

Q.47. Did you ask him? A. No.

Q.48. You sent him a check for $1,712.82? A. Yes, I think that was the amount.

Q.49. At that time did you know that the Actuarial Committee was handling this matter? A. Handling what matter?

Q.50. The matter of disbursements for expenses in this case? A. No, I knew nothing about it.

Q.51. You knew nothing about it? A. No.

Q.52. Mr. Street asked you for $1,712.82 and you sent it? A. I sent it to him.

Q.53. Then you wrote, "Am advising you of this transaction personally as until the final distribution and participation of expenses is made, the amount can not be definitely allocated to the proper place of charge." A. Right.

Q.54. You didn't even know it was for attorneys' fees? A. I didn't know what it was for.

Q.55. Had no idea? A. I knew it was for expenses. Mr. Street said it was for expenses and I sent him the check and took his receipt for it.

Q.56. Had you paid out any expenses in connection with this litigation prior to that time? A. Not that I recall.

Q.57. This was the first item of expenses? A. That is the first one. I don't remember any other. There may have been some, but I don't remember it.

Q.58. Did you get Mr. Street's receipt? A. Yes, sir.

Mr. Berger: It is in the file there, following the first check.

(Said receipt, handed to the reporter, was marked for identification as "Defendants' Exhibit 28, EFM.")

Q.59. (By Mr. Senator Hollingsworth) I hand you Defendants' Exhibit 28 and ask you to state if that is the receipt. A. Yes, sir, that is the receipt.

Senator Hollingsworth: We offer in evidence Defendants' Exhibit 28.

(Which said Defendants' Exhibit 28, so offered in evidence, having been previously duly marked, is in words and figures as follows, to-wit:)

APPROVED

VOUCHER RECEIPT

RECEIVED

Received of [X] FIRE ASSOCIATION OF PHILADELPHIA.
Received of [ ] VICTORY INSURANCE COMPANY OF PHILADELPHIA.
Received of [ ] RELIANCE INSURANCE COMPANY OF PHILADELPHIA.

WESTERN DEPARTMENT, CHICAGO, ILL.

116

$17.12 82

MAR 13 1936 193

Seventeen hundred twelve and 82/100 Dollars

For Adv. Exp. Re. Litigation

CK 72117

Chairman

Q.60. (By Senator Hollingsworth) Now, that is signed, "C. R. Street, Chairman." A. Yes, it is; I see that.

Q.61. You understood him to be chairman of the Actuarial Committee? A. Oh, I knew he was chairman of the Actuarial Committee, yes.

Q.62. Was that the committee as chairman of which I understood he signed it?

Mr. Berger: It speaks for itself.

The Special Master: No, this is all a question of what knowledge these people had. He said he signed as chairman, and we are trying to find out what he understood he was doing.

Q.63. (By Senator Hollingsworth) Did you understand that he meant C. R. Street, chairman of the Actuarial Committee? A. I didn't give it any thought. Mr. Street asked me for $1,712.00. I sent it to him and he sent me a receipt.

Q.64. Then you wrote Mr. Lane, advising him personally? A. Yes.

Q.65. Now, why did you advise Mr. Lane personally about this check? A. Because I was leaving the same day or the next day for Hot Springs, Arkansas, to be gone for some little time and I wanted the chief to certainly know about any expenditure of $1,712.00 that was made in this department.

Q.66. Well, you didn't tell him what it was for except expenses? A. That is all. That is all I knew that is what it was for.

The Special Master: Why did you want him to know about it?

A. Because I didn't think it would look very good for me to send out $1,712.00 and not tell the head office about it.

Q.67. (By Senator Hollingsworth) You didn't tell him what it was for, did you? A. I didn't know.

The Special Master: Was that enough money to attract attention.

A. That isn't a lot of money, but it is enough that it might attract attention.

Q.68. (By Senator Hollingsworth) Why didn't you ask Street then what expenses it was to be used for? A. I never gave it a thought.

Q.69. You never gave it a thought? A. No.

Q.70. But you did give it a thought when you went to account to your principal, Mr. Lane, didn't you? A.

Because it was an expenditure from the office, and I wanted him to know where it went and I told him.

Q.71. You knew it would attract his attention? A. I don't know as it would attract his attention. He might never see it, but I wanted him to know I had paid out $1,712.82 or whatever it is.

Q.72. But you didn't want him to know for what purpose it had been paid other than expenses? A. That was the only purpose it was paid for, that I knew about, was expenses.

Q.73. What kind of expenses? A. I haven't any idea.

Q.74. You don't have any idea? A. I had no idea.

Q.75. Did you ask Mr. Street? A. No, I don't believe I did.

Q.76. Never undertook to find out? A. I don't think I ever asked him anything about it, just simply it was for expenses and I paid the money.

Q.77. Now, you said the amount cannot be definitely allocated to the proper place of charge? A. Right.

Q.78. If you had asked Street you could have immediately found out how to allocate it, couldn't you? A. I don't know whether I could.

Q.79. How did you carry it on your books? A. Legal expenses.

Q.80. How did you know to carry it legal expenses? You hadn't heard of legal expense. A. No, but the accountant came to me and asked me what he should charge this $1,712.00 to, and I said, "For now charge it to legal expense."

Q.81. Why did you charge it to legal expense? You didn't know. A. I couldn't think of any other expense it could be in connection with in the Missouri impound case.

Q.82. Mr. Street was available. A. I guess he was.

Q.83. He had talked to you. A. I don't know; I didn't ask him.

Q.84. Why didn't you call him back? Here you were, carrying an item up in the air on your books. You didn't know where to place it and you even thought enough of it to write your president to explain the mystery to him. Why didn't you ask Street and get the mystery solved? A. I wasn't thinking there was any mystery.

Q.85. Well, you wrote your president. A. Surely.

Q.86. You wanted the president to know you had a check up in the air and didn't know where to put it?

Mr. Berger: The letter doesn't say that. I don't think that is a fair comment.

Q.87. (By Senator Hollingsworth) Did you know where to put it?

The Special Master: No, he wrote that he didn't know. He would have to wait. He said when the bookkeeper told him, he told him to put it that way because he didn't know what else to tell him.

A. That is right.

Q.88. (By Senator Hollingsworth) Do you generally carry items on your books that you don't know where they are properly placeable? A. There are items.

Q.89. What? A. Well, I am not the accountant. I don't remember them.

Q.90. Well, I know, but the accountant asked you; he didn't do this on his own judgment? A. No, the accountant comes in and asks me about expenditures and says, "Where does that go, to such and such an account?" And I say, "Why, yes, that is all right."

Q.91. You say you frequently carry items like that on your books? A. I didn't say frequently.

Q.92. Is this the first time you ever did it? A. I don't remember.

Q.93. You can't remember any other transaction where you did it, can you? A. No, but I presume the accountant could probably find some.

Q.94. I know but there the accountant came to you and you couldn't tell him? A. I don't remember at this time any incidental items that might come to me for advice as to where they should be charged.

Q.95. On March 17th you sent Mr. Street the check, did you not? A. I don't know what the date is. Whatever it says there. You have the copy.

(Said letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 29, EFM.")

Q.96. You are referring to Defendants' Exhibit 29? A. That is right.

Q.97. You sent it in this letter, Defendants' Exhibit 29, which we now offer in evidence? A. I sent him the check. You have a photostatic copy of the check.

(Which said Defendants' Exhibit 29, so offered in evidence, having been previously duly marked is in words and figures as follows:)

120

COPY

March 13, 1926

Mr. C. P. Street
310 S. Michigan Avenue
Chicago, Illinois

Dear Mr. Street:

In accord with our conversation of yesterday, I enclose check in amount $1712.82. Please sign attached receipt and return to me as a voucher.

Sincerely yours,

Manager.

AFP/em
Encl.

[redacted]

Q.98. "In accord with our conversation of yesterday"—this is addressed to Mr. Street—"I enclose check in the amount of $1,712.82. Please sign the attached receipt and return to me as a voucher." A. Right.

Q.99. You wrote the receipt which you asked Mr. Street to sign? A. Well, I didn't write it personally, but it was written in the office.

The Special Master: Let me see the receipt again.

A. You had it there a minute ago.

Q.100. (By Senator Hollingsworth) Did you write that out, that is Defendants' Exhibit 28? A. No, I didn't write that.

Q.100½. Who did? A. I would say from the penmanship that our accountant wrote that out, Mr. L. H. Hornbrook. It looks like his handwriting.

Q.101. Is he the man to whom you told it would be entered on the books as legal expense? A. Undoubtedly.

Q.102. Then why was it written "advance expense" instead of "legal expense, Missouri litigation"? A. Because it was later, I believe, that he asked me if he should put it in legal expense and I told him yes. That is my recollection.

Q.103. He asked you if he should put it in legal expense? A. Yes, I think so.

Q.104. Sir? A. As I remember it, yes.

The Special Master: Of course, this statement, "C. R. Street, Chairman," obviously he didn't write the "Chairman" on there, or did you? Who wrote "Chairman" there?

A. I presume Mr. Street wrote it, I don't know. I most certainly did not.

Q.105. (By Senator Hollingsworth) Didn't the man who wrote the body of the receipt write the word "Chairman" on there? A. I haven't any idea.

Q.106. You don't have any idea? A. No, but I would suppose Mr. Street wrote "Chairman" on there. I don't know anything about it. I didn't write it, I know that.

Mr. Bullett: I would think, Mr. Master, but I think that the words "For expenses, Missouri Litigation" were in the same handwriting as the word "Chairman," and whether that is in the same handwriting as "Street" or the body of the receipt—

The Special Master: I do not think it is the handwriting of either one of them. I do not think it is

Mr. Street's handwriting and it is obviously not the handwriting of the person who wrote "$1,712.00."

A. I think the word "Chairman" is not the same writing as "Street."

The Special Master: I do, too, but I don't think it is the handwriting of Mr. Street.

Q.107. (By Senator Hollingsworth) At the time you sent this check on March 13, 1936, you still didn't know the items of expense for which this was to be disbursed? A. No.

Q.108. Had no information and you had an entry on your book that you didn't know whether it was right or wrong as to legal expense? A. I didn't know that it was right or wrong? Just explain that, what you mean by that.

Q.109. I mean right or wrong in regard to being legal expense or other expense. A. I knew it was an item of expense, and I took a receipt for it as an item of expense.

Q.110. Why didn't you ask Street to tell you what it was for at the time you wrote him the letter, please explain what it was for for your records? A. Well, that is a fair question to ask, now.

Q.111. Well, I am asking it on that theory. A. But at that time I had no thought of questioning what an item, a request from Mr. Street was for.

(Letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 30, EFM.")

Q.112. I hand you Defendants' Exhibit 30 and ask you to state if that was a letter received from Mr. Street under date of April 27, 1936? A. It is.

Q.113. He says here, "Dear Abe." That is you? A. That is I.

Q.114. "Here are four checks as follows: Fire Association of Philadelphia, $3,854.86; Lumbermen's Insurance Company, $1,606.75; Reliance Insurance Company, $1,045.68; Victory Insurance Company, $631.12. Adding this to what I gave you before makes 11 per cent of your impounded premiums in Missouri." Now, on April 27th after you got that letter you knew that you had received 11 per cent of your impounded premiums in Missouri. That is right, of course? A. Well, that letter says so; so I assume that is so.

Q.115. You knew that this money was coming out of the 30 per cent that had been retained for the payment of expenses and any overplus should go to the com-

pany, didn't you? A. I don't know. I don't remember what there was to it. I know that those checks came and I know what that letter says. I received that letter.

Q.116. "These checks are supposed to be for 5 per cent. Please deduct from their respective amounts what you paid me before and send me your check for the difference, which will mean you have paid me 5 per cent of the total amount of premiums you have impounded in Missouri, but that out of the expense funds apportioned to me and Folonie as trustees, you have been furnished the money to pay it." A. That is what the letter says, I believe.

Q.117. "This has been done by every company without exception. After the plan was changed I left you for the last and then held it over in order to explain it to our friend Lane, which was done at White Sulphur. He told me to tell you to do as the others had done and it would be all right with him." What plan was changed? A. I haven't any idea.

Q.118. You mean now at the time Street wrote you this letter you didn't know that there had been any plan of any kind? A. No.

Q.119. "After the plan was changed, I left you for the last and then held it over in order to explain it to our friend Lane, which was done at White Sulphur." Now, Mr. Lane was your president, wasn't he? A. That is right.

Q.120. Did you ever talk to Mr. Lane about it? A. To the best of my knowledge, no, about any plan.

Q.121. How did you ultimately charge that check? You first charged it up as legal expenses? A. Yes.

Q.122. How did you finally charge it? A. We deducted it as the letter says.

Q.123. And left it on your books as legal expenses? A. No that was deducted from those remittances that are mentioned there, you will find as you go along.

Q.124. Did you ever talk with Mr. Lane about it at all? A. I don't believe I ever did. I don't ever remember talking to Mr. Lane about that account.

Q.125. Did he ever write you? A. No.

Q.126. Did you ever write him? A. About this account?

Q.127. Yes. A. Other than you have—

Q.128. (Interrupting) Other than what I have read you? A. I don't remember that I did, but I don't remember of ever writing him about it.

Q.129. "He told me to tell you to do as the others had done and it would be all right with him." Now, was it on the strength of that letter from Mr. Street that you paid out that money, seventeen hundred and some odd dollars? A. Oh, no, it was the total of the others, less $1,712.00. I don't remember what the amount is.

Q.130. Well, you deducted what you had advanced him and then sent him the balance? A. That is right.

Q.131. Now, did you do that because Street had told you that it would be all right with Mr. Lane? A. I did that because of that letter.

Q.132. And was it because of the fact that you had authorization from Mr. Lane through Street, as you understood it? A. No, not particularly authorization because of that letter from Mr. Street.

Q.133. You sent it? A. I sent it.

Q.134. On the theory that a plan had been arranged between some parties?

Mr. Bullitt: I object to that, if your Honor please. The money was paid to Street in March and the letter about the plan wasn't until April 27th.

The Special Master: Well, yes, and it is putting it in the witness' mouth.

Mr. Bullitt: Not only putting, but putting a statement of fact that isn't correct.

The Special Master: I know it is. That is objectionable and sustained.

Q.135. (By Senator Hollingsworth) Well, you got that letter?

Mr. Bullitt: It is like saying to a lady a child was born before she was married.

Q.136. (By Senator Hollingsworth) Then on April 19th you wrote Mr. Street, did you not? A. That is right.

(Letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 31, EFM.")

Q.137. That is as per your letter, Defendants' Exhibit 31, which we now offer in evidence.

(Which said Defendants' Exhibit 31, so offered in evidence, having been previously duly marked, is in the words and figures as follows, to-wit:)

COPY

April 29, 1936

C. R. Street, Vice President
310 South Michigan Avenue
Chicago, Illinois

Dear Mr. Street:

Thanks for your letter of April 27th and checks payable to the Fire Association of Philadelphia, Lumbermen's Insurance Company, Reliance Insurance Company and Victory Insurance Company, totaling $7,138.41, As per your suggestion we have deducted the item of $1,712.82 for which check was recently sent to you and return proportionate amounts from each of the above companies, totaling $5,425.59.

Hope we have handled this as you intended.

Yours very truly,

Manager.

KB...

D31

Q.138. Now, you sent to Mr. Street in the first instance $1,712.82. Then you sent him in April of 1936 an additional $5,425.59. What was that for? A. What are you asking now?

Q.139. What was that for? A. You mentioned some figures there. Please repeat them until I see about that.

Senator Hollingsworth: Read the question.

The Special Master: He means that last mentioned check.

Mr. Berger: You are speaking of the last figure as the aggregate of several checks?

A. Mr. Street's letter explains that.

Q.140. (By Senator Hollingsworth) No, I am asking you— A. (Interrupting) It explains what I did.

Q.141. You sent him that? A. At his request.

Q.142. What was that for? What did you send it to him for, for what purpose? A. Because he asked for it.

Q.143. Did you have any idea what it was for? A. I had a surmise that it was probably for our portion of expenses in the Missouri impoundment case.

Q.144. Well, you knew that the trustees had funds for that, didn't you? A. Well, no, I didn't know what the situation was.

Q.145. Well, you knew that the trustees had funds in their hands? A. Yes, and I had no idea of what in the distribution of the allocation of the funds in the trustees' hands, but what this money would be repaid to us.

Q.146. You didn't know that? A. I didn't know but what in the allocation of the funds, the expense funds in the trustees' hands, this money might come back to us.

Q.147. Which money come back to you? A. What we were paying, these checks.

The Special Master: The amount you asked, what was it for?

A. I didn't know what it was for.

Q.148. (By Senator Hollingsworth) You don't know what it was for? A. I don't know what it was for. I surmised it was for expenses.

Q.149. Did you ask Mr. Street? A. No.

Q.150. Made no inquiry at all? A. No, none whatever.

Q.151. And don't know to this day what it was for? A. No.

Q.152. Have you made any inquiry to this date to find out? A. No.

Q.153. How did you enter it on your books? A. Well, you look at that and you will see kind of a funny entry there.

Q.154. Let's see what it is. A. That was entered as contra account.

The Special Master: As what?

A. Contra account.

General Bullitt: In other words, one amount in—

A. (Interrupting) 11 per cent went in and 5 per cent was charged back. There is a recap. In the first place, I am not an accountant, so I may be a little dumb on the accounting side of it.

Mr. Berger: It is the last page.

A. There you are. Now, may I tell this in my own way?

Q.155. (By Senator Hollingsworth) Tell me about the accounting. A. That is what I want to tell in my own way.

Q.156. Go ahead. A. In the first place, there was $1,712.89. In the first place there was $1,712.89 check for that amount sent to Mr. Street in answer to his request to me over the telephone for that amount of money. Later in these items there are in question these moneys, the checks, Fire Association, $3,854.00; Lumbermen's etc., and the prorata share of each company participated in the $1,712.00 was deducted from those items. Then instead of charging that as legal expense or anything else, our accountant enters that as contra accounts and there is no charge, no allocation of those moneys on our books. It was a contra account and I said to him the other day, "If this Missouri impound had all been paid 100 per cent you would be that much short of balancing your books, as I see it."

Q.157. Why didn't you enter it up just as an ordinary transaction where you received money and disbursed it, or parts of it? Why didn't you enter it up that way? A. You are asking me a question about accounting which I will not attempt to answer because I don't know anything about accounting.

Q.158. Can you explain why you didn't enter it in your books in the ordinary course of business? A. No, except that that is the procedure that our accountant took on it.

The Special Master: Well, your accountant would undoubtedly determine whether it was a contra account or not and would undoubtedly determine whether it was a debit or credit and how it should be handled after he got the information, but where did your accountant get any information to handle it at all? Didn't you tell the accountant anything about it? A. To the best of my recollection, the first time I knew anything about this contra account was on the recap that was shown after these photostatic copies were taken.

The Special Master: I know the use of the words "contra account" was his own idea, but didn't he get any information from you before determining how to handle it? Did the money just come in and he decided to do the best he could without trying to find out from anybody where the money came from or why it went out again? A. I wouldn't say that, sir. It is several years ago, and I don't know whether he said anything to me about it. I approved Mr. Street's letter and sent it out to the accountant. I think that is the procedure.

Mr. Bullitt: He wrote Mr. Powrie a letter.

The Special Master: Then the accountant had access to the letter?

A. I presume the accountant had access to the letter. That would be the usual procedure.

The Special Master: But he didn't ask you any further questions about it, so far as you remember?

A. I don't remember, sir.

The Special Master: That was in the Western Department?

A. Yes, sir.

The Special Master: Did the home office accountant ever ask you to explain it?

A. I don't think the home office accountant ever asked us anything about it.

Q.159. (By Senator Hollingsworth) Did the account go into the home office under this form of a contra account, contra receipt or contra distribution? A. The books would show that, but I don't know.

Q.160. Do you have any other entries on your books in regard to any other business that is written in this manner, contra receipt and contra-distribution? A. I don't know.

Q.161. Is this the first time that you have ever seen that kind of an entry on the books of your company? A. Well, I wouldn't answer that either yes or no. I may have

some others. The accountant may have called my attention to the contra-accounts, but I don't remember any specific cases.

Q.162. That is the only one you remember? A. This is the one I remember now. I don't remember whether there are others or not.

The Special Master: Of course, "contra-account" means just an account against another account to show that what seems to be two transactions were essentially one, without explaining what.

A. I started by saying that I don't claim to know anything about it. I don't pretend to.

Q.163. (By Senator Hollingsworth) At the time you disbursed this, you disbursed it simply because Street told you to? A. Yes, I think that is true.

Q.164. And left it to him to disburse it as he saw fit? A. Oh, no, he wasn't disbursing it. He wrote us a letter asking us to do certain things and we did it. Now, if you want to call it that way in the manner you describe it, that is one thing.

Q.165. Well, you left it to him to pay out to whomsoever would receive it without any strings at all? A. No, no, we sent it to him.

Q.166. Did you tell him what to do with it? A. No.

Q.167. So you left it to him to do with it as he saw fit? A. Well, you are making that.

The Special Master: He put it in the form of a statement, but treat it as a question. Did you or did you not leave it to him to disburse as he saw fit?

A. I sent him the money without any question, if that is what you are asking.

The Special Master: And never asked him to account for it?

A. I don't remember whether we ever asked. I naturally supposed that sooner or later there would be an accounting of the entire transaction of everything.

Q.168. (By Senator Hollingsworth) Has there ever been? A. No, I don't believe there has.

Q.169. Have you made inquiry about it? A. I think perhaps that once or twice, I think perhaps that I asked Mr. Street about it when the Missouri settlement figures would all come through. I think that I did, yes.

Q.170. Where did you see him? A. Pardon?

Q.171. Where did you see him when you asked him that? A. I don't remember. I haven't said that I did.

I said I think perhaps I asked him when I would meet him.

Q.172. Did you ask him about anything about what this item was for at that time, any other time? Have you ever asked anybody about what this was about and what it was for? A. No.

Q.173. Do you have in your files or in your possession an original letter dated November 9, 1936, addressed to Mr. Powrie? I understood from Mr. Berger you had it. A. Yes.

Q.174. Will you let us see it? A. Right here.

Q.175. Did this communication come to you as the result of an inquiry? A. I can't answer that, but I would assume that it did. I don't know why he would send me that communication otherwise, and as I said, I may have asked him about it.

Q.176. Do you have a file? Do you keep carbon copies of your letters? A. I have no file on that, no, and that looks as if it was a statement that I had asked him a question and he had typed that and sent it over to me.

(Said letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 32, EFM.")

Senator Hollingsworth: I offer in evidence Defendants' Exhibit 32, and also Defendants' Exhibit 30, if I have not already done so.

(Which said Defendants' Exhibits 30 and 32, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

WESTERN DEPARTMENT
310 SOUTH MICHIGAN AVENUE
POST OFFICE BOX 758
CHICAGO

Great American Insurance Company New York

C R STREET
Vice President

G D GREGORY
Secretary

CHICAGO April 27, 1936.

Dear Abe:

Here are four checks, as follows:

Fire Association of Philadelphia	$3854.86
Lumbermen's Insurance Co.	1606.75
Reliance Insurance Co.	1045.68
Victory Insurance Co.	631.12

Adding this to what I gave you before makes 11% of your impounded premiums in Missouri.

These checks are supposed to be for 5%. Please deduct from their respective amounts what you paid me before and send me your check for the difference, which will mean you have paid me 5% of the total amount of premiums you have impounded in Missouri but that out of the expense funds apportioned to me and Folonie as Trustees you have been furnished the money to pay it.

This has been done by every company without exception. After the plan was changed I left you for the last and then held it over in order to explain it to our friend Lane, which was done at White Sulphur - he told me to tell you to do as the others had done and it would be all right with him.

Yours very truly,

CRS agent

RECEIVED
APR 28 1936
A. F. P.

Mr. A. F. Fourie,
222 West Adams Street,
Chicago, Ill.

(4) D 30

Dest Contra
3854.86-FA
1606.75-L
1045.68-R
631.12-V

Dest Contra
CRS 2 92990-
924.96-FA
CRS 1 221.22
385.53-V
CRS 794.78-
250.94-L
CRS 951.45-R

"DEFENDANTS' EXHIBIT 32.

Great American
Insurance Company
New York

November 9, 1936.

Mr. Powrie:

Missouri

The companies have been paid 61% of their impounded premiums in cash, and if we can cut off the lawyers, who, however, show no disposition to let go of a good thing and little disposition to really compromise, we should be able to return to the companies about 9% additional in cash, or 70% in all.

Under court order the only distribution which has been made was out of impoundments down to May 1, 1935. In the fullness of time companies will receive 50% on the impoundments subsequent to May 1, 1935, but when this will be paid I do not know, nor, for that matter, does anyone else.

On these impoundments, May 1, 1935, until November, the companies will not receive in the end in excess of 55% as against 70% on previous impoundings. This is for the reason that the assured under the settlement receives a refund of one-third of 16-2/3% May 1, 1935, to November, whereas prior to May 1, 1935, the assured receives only 20% of 16-2/3%.

As to expenses I do not know what to say, nor, for that matter, will anybody else. It is my intention in this office to charge back to the State of Missouri in our Tax Returns for this year the 20% to be returned to policy holders on the early impoundings and one-third of the impoundings subsequent to May 1, 1935, as return premiums, which is an entirely legitimate proposition; to charge about 5% of our total impoundings to legal expense and to charge off anything that is left in the end as uncollectable premiums, the same as agents' balances not collected.

Before we went into this settlement special care was exercised to see that our attorneys approved a disposition of the case along the lines of the settlement as later made. They seemed really enthusiastic at the time and promised all sorts of co-operation, but I must say that later on their general disposition has been to delay in order that additional fees may be claimed - it is particularly unfortunate for us that this case has repre-

sented 99% of Mr. Folonie's practice during the five years prior to the time the settlement was agreed upon.

C. R. S."

The Special Master: Let's see what Defendants' Exhibit 32 is. Whom is this from?

Senator Hollingsworth: C. R. Street.

The Special Master: That is C. R. S. That means C. R. Street?

Senator Hollingsworth: C. R. Street.

General Bullitt: That is the same letter that was sent to Mr. Williams, the prior witness?

The Special Master: Yes, I know it is, but we didn't go into it at that time because it was a copy, and the statement was that the original would be produced later on, so I didn't look at it.

Mr. Berger: You can lay this right down on the top of the other, and it fits, so the other one is very evidently a carbon.

Q.177. (By Senator Hollingsworth) Mr. Powrie, you have learned, have you not, through the press, that it is generally charged that this money, this 5 per cent that you sent, was used for a fraudulent and improper purpose? You have learned that, haven't you? A. Well, through the press I have learned that it is charged that some moneys were used for fraudulent purposes. The press has recited that very thoroughly.

Q.178. And you learned that a part of the money which you had put up, your companies, had been used for that purpose? A. Well, according to the press, perhaps that is so, yes.

Q.179. Have you made any inquiry to find out if that is true? A. No.

Q.180. None whatever? A. No. Of whom would I make inquiry?

Q.181. Have you talked to anybody in the insurance world about it, trying to find out about it, whether or not some of your companies' money went for that purpose? A. Whether our companies' money specifically went for that purpose?

Q.182. For the purpose of paying Pendergast and others off to effect this compromise? A. Now, I don't know where the money—I don't know anything about where the money went.

Q.183. I mean have you made any inquiry to find out? A. From whom?

Q.184. From anybody. A. From whom should I inquire?

Q.185. I don't know. A. From whom could I inquire?

Q.186. Have you made it from anybody? Please answer the question. A. No.

Q.187. You have not? A. No.

The Special Master: Now, having made that statement, having answered the question, you are entitled to explain if you want to.

A. The man to whom I paid any money is dead. I couldn't make any inquiry from him.

Q.188. (By Senator Hollingsworth) On November 9, 1936, you received this information contained in Exhibit 32. Mr. Street died February 1, 1938, did he not? A. I think so.

Q.189. Did you ever make any further inquiry of Mr. Street about the distribution of these funds? A. No.

Q.190. You did not? A. No.

The Special Master: How long was it after you made these payments to Street when Mr. Street died?

A. Well, Mr. Street died, as the gentleman has just said, in 1938, and our payments were made in 1936.

The Special Master: He lived for a couple of years after that time?

A. Yes.

The Special Master: Where was his headquarters?

A. In Chicago.

The Special Master: Yours were in Chicago?

A. Yes, sir.

The Special Master: So you were not prevented from inquiring of him, you just didn't do it; is that it?

A. That is it, assuming that eventually there would be some statement made as to the entire settlement of the Missouri refund case.

General Bullitt: That has not been settled yet.

A. And in that letter, if I may be permitted, I don't remember how that statement came, probably as it was getting along toward the end of the year, I probably asked Mr. Street about the Missouri impound case, and in his usual way he probably said, "Well, I will send you a statement," or something of that sort. He was a peculiar man and that letter came which deals with the accounting part of it, as to making the statement.

Q.191. (By Senator Hollingsworth) When the end of 1937 came did you make inquiry then? A. No, not that I remember of, no, sir. I don't know that I did not. I can't remember how many times, whether I ever—whether I inquired of Street on more than one occasion or on a dozen occasions about how the Missouri case was progressing. The thing had dragged along for years and it was handled by—I was not in the handling of it and knew nothing about it.

The Special Master: It has just been stated by Mr. Bullitt that the Missouri rate case has not been settled yet. I haven't paid any attention to it, but from newspaper articles I have seen from time to time, I got the impression there is still an impounded fund or was before there was any repayment of funds back in the court; there was still an impounded fund in the custodian's care that had not been completely—

Judge Lucas (Interrupting): A small sum.

Mr. Berger: No, not a final settlement. The final decree made the provision that the companies' portion of impoundings on policies effective from May 1, 1935, to November 11, 1935, should not be paid back to the companies. It amounts to about $630,000.00.

The Special Master: All right, that is what I am getting at. Is that the amount that was still in before any order was made to pay back?

Mr. Berger: Yes, sir, and it was not to be paid back to the companies until after the distribution had been made to the policyholders and that hasn't been paid back yet.

The Special Master: What was the purpose of that?

Mr. Berger: The purpose of that at the time the decree was entered was that the costs of the impoundings were to be paid out of the companies' portions of the accretions, and if that was not sufficient to pay the cost of impoundings, then the other fund representing 66 2-3 per cent of the premiums was to be used out of which to pay the expenses.

The Special Master: That was the cushion against the expenses of the custodian of its funds in making disbursements?

Mr. Berger: Yes, sir, so that represented 66 per cent of the impounded premiums from May 1, 1935, to November 11, 1935, and it is a figure in excess of $600,000.00.

Mr. Bullitt: There wasn't enough money to pay the expenses. If they were distributed, the companies would

have to pay that out of what otherwise they were entitled to put back in their own pockets.

The Special Master: Yes, it was a cushion against distribution.

Mr. Berger: The companies still had something coming.

The Special Master: The reason I am asking those questions and making these suggestions, unless I know what you really mean, it confuses rather than clears things up for me. Of course, you understand it perfectly.

Mr. Bullitt: No, I don't know that I understand it very perfectly, but I notice in respect to the last thing that in the letter that Mr. Powrie wrote to his president—

The Special Master: I saw that.

Mr. Bullitt: He wrote that he wasn't going to get a settlement of the participation.

The Special Master: That is all.

(Witness excused.)

Judge Henson: I just wanted to make the record clear in one place. I tried to introduce Exhibits 16 to 26. I want to introduce all of them, if I missed any of them as I went along. As I went along, I usually identified them, but I could slip on one or two, but I am now introducing Exhibits 16 to 26 so as to make it clear.

The Special Master: You can confer with the stenographer and if you find out you overlooked any, you can correct it the first thing in the morning.

We will adjourn until nine o'clock.

Whereupon, the further taking of testimony in said case was adjourned until nine o'clock a. m. of Friday, July 28, 1939.

MORNING SESSION, FRIDAY, JULY 28, 1939.

Pursuant to adjournment as aforesaid, at nine o'clock a. m. of said Friday, July 28, 1939, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

GEORGE H. BELL, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. Your name is George H. Bell? A. Yes, sir.

Q.2. Where do you live, Mr. Bell? A. In Hinsdale, Illinois. Chicago is my office.

Q.3. How long have you lived here? A. Twenty-five years.

Q.4. You knew Charles R. Street? A. Very well, sir.

Q.5. Were you on the Subscribers' Actuarial Committee? A. At various times during the past, well, since 1915.

Q.6. You have been on that committee since 1915? A. Well, off and on. I have been on and off.

Q.7. You were on that committee both years 1935 and 1936, weren't you? A. Yes, sir.

Q.8. In addition to that you are the western manager of the National Fire? A. National Fire Insurance Company and its affiliated companies.

Q.9. What? A. The Mechanics and Traders Insurance Company, the Transcontinental Insurance Company, the Franklin National Insurance Company.

The Special Master: Were those the same affiliates in 1935 and 1936?

A. Yes, sir.

Q.10. (By Judge Henson) Do you hold any office in any of those?

A. Oh, no, I am just the western manager.

Q.11. Are you on the board of directors of any of those companies? A. No, sir.

Q.12. Or were you in 1935 and 1936? A. No, sir.

Q.13. The Missouri rate litigation concerning the sixteen and two-thirds percent increase, I want to ask you about. This Actuarial Committee was handling that litigation, weren't they, for the companies and your companies? A. Yes, sir.

Q.14. Who was chairman of the Actuarial Committee? A. Mr. Street, I think was at that time.

The Special Master: Isn't that all in?

Judge Henson: Well, I expect it was.

The Special Master: Yes.

Q.15. (By Judge Henson) Mr. Bell, was the Missouri rate litigation discussed by this Actuarial Committee any during the years 1935 and 1936? A. Discussed the Missouri litigation?

Q.16. Yes, sir, in the Actuarial Committee. A. Oh, yes.

Q.17. Were records made of what was done at those committee meetings? A. The minutes should show everything that was ever said or done.

Q.18. I will ask you if any discussion was made looking to a settlement of the Missouri rate litigation before that committee prior to May 18, 1935, assuming May 18, 1935, to be the date the contract of settlement was made? Was it discussed before the committee? A. Discussed at various times. The matter was brought up of possible settlement, pressure being brought upon us by local agents all over Missouri, very strong pressure. It was discussed.

Q.19. What was that pressure, to do what? A. To settle it, to compromise it, to get rid of it so they could get their commissions.

The Special Master: Just while we are here, when the funds were impounded, the amount impounded was the difference between what the companies were in fact charging and what they would have been entitled to under the order of the Superintendent of Insurance? A. Yes, sir.

The Special Master: And that whole amount was impounded, which included whatever percentage, 15, 20, 25 per cent would be coming to the agents?

A. Yes, sir.

Q.20. (By Judge Henson) To that extent they were interested in the impounded funds? A. I think so, yes.

The Special Master: I am just doing that. I know what it is, but I want this record to show it.

Q.21. (By Judge Henson) Now, Mr. Bell, I will get you to state whether the committee took any action with reference to delegating to Mr. Street the authority to make a settlement? A. Well, as I remember it—of course, my memory is not very good dating that far back, four years back, as to the detail of it, but certainly the committee did give Mr. Street sole authority to negotiate a compromise settlement of that litigation.

Q.22. Did they put any restrictions on his authority? A. None to my recollection.

Q.23. What did he tell the committee was the possibility of settlement, that is, the percentages of division or otherwise? What report did he make? A. Well, as I remember it, there were various suggestions made, possibilities of settlement, but his final report in the settlement of 80 per cent and 20 per cent is the only one that I distinctly remember.

Q.24. Do you remember any discussion prior to that of a possibility of settling it at 10 per cent to the policyholders and 90 per cent to the companies? A. Yes. It

wasn't one of the things that impressed me particularly and doesn't today. That was naturally the kind of a settlement which we as members of the committee would have liked to have seen made, because we felt we won our case anyway.

Q.25. Then what was the object of the settlement instead of going on and winning the case? A. To satisfy our local agents. To satisfy some companies who felt that they were sick and tired of this litigation and expense. It was interfering with the progress of our business in Missouri. We were unable to make filings of rates and procure the policy forms and coverages which were filed in other adjoining states; in other words, that our progress in Missouri was being blocked by this continuous, long standing litigation. We had better sacrifice something rather than to continue it.

Q.26. There was no contingency by which the agents would have lost their commissions if you had gone on and won the suit, was there? A. They would have profited to a greater extent if the settlement had been made with the agents getting the commission on that part of the impounded premium only which the companies retained.

Q.27. Do you recall being present at a meeting of the Actuarial Committee on March 19, 1935? A. Well, I wouldn't remember the date, no, sir, I would not. The minutes would show whether I was present at that meeting.

Q.28. I will show you the minutes. A. Undoubtedly I was present.

Q.29. You say you were present at that meeting? A. I was present, yes, sir.

Q.30. The minutes so show. A. Well, that is conclusive.

Q.31. I notice in here that the first minute says, "After referring to the above subjects in a general way" —that is the Missouri rate litigation—"the Chairman explained at length the correspondence he had." Do you recall what that correspondence was? A. I do not.

Q.32. And it says in there, "as well as those which he expected to have in the near future." Do you recall what that correspondence was that he expected to have? A. No, sir, I do not.

Q.33. Then I notice that "It was voted the sense of the meeting that the Chairman be authorized to proceed with conferences." With whom were those conferences

to be had? A. Presumably with the state authorities. I know of no one else that he had conferences with.

Q.34. Do you recall particularly that he named anybody with whom he expected to have a conference? A. No, sir.

Q.35. And you are just assuming that that means the state officials of the State of Missouri? A. Absolutely the only people he could negotiate with.

Q.36. Now, it says he was "authorized to proceed with the conferences in the manner outlined" by him. What outline did he give you as to what his conferences would be? A. Well, I don't remember, sir, except presumably the terms of any compromise settlement which he would attempt to secure.

Q.37. Then you can't recall what he outlined there as the manner of his conferences, what he expected to do? A. No, sir.

Q.38. Did he outline to you there that he expected to raise a large sum of money and to pay that in corruption? A. No, sir.

Q.39. That wasn't outlined there in any way? A. Absolutely not.

Q.40. He was to report back to the committee at a future meeting the results of such conferences. Did he ever report back to the committee the results of his conferences? A. Only that he might settle this litigation on an 80-20 basis. He did report that back. That is the only thing I distinctly remember.

Q.41. Did he report the details of the various conferences, what one said and what the other said? A. No, sir.

Q.42. What one contended and what the other said? A. No, sir.

Q.43. Did he report how many conferences he had? A. No, sir.

Q.44. Or over what length of time it was? A. No, sir.

Q.45. And the first you heard of it then was results? A. The first I heard after this meeting in which we gave him this authority to negotiate.

Q.46. Was the result? A. Yes, sir.

Q.47. And what was that? A. 80-20.

Q.48. Was there any segregation of the 80 per cent as you recall? A. No, I don't quite understand what you mean.

Q.49. You said 80-20. That would make 100. A. That is 80 per cent for the company and 20 per cent for the policyholders.

Q.50. Did you understand in the 80 per cent that the companies were to immediately get 50 per cent and that 30 per cent was to be set aside? A. I don't remember that any such detail was discussed, sir.

Q.51. Well, when did you first hear, if you ever heard of the 80 per cent set aside to Street and Folonie as trustees to pay expenses? When did you hear that? A. I wouldn't remember, sir.

Q.52. Well, you understood the expenses were to be paid out of the 80 per cent then, didn't you? A. The expenses were to be paid after the 50 was paid by the department to the companies. That left 30 which went —you said 80. I suppose you meant 30, sir.

Q.53. I thought I would get you to divide it. But then 30 per cent of the whole was set aside to Street and Folonie as trustees? A. Yes, sir.

Q.54. And you understood at the time what that was for, didn't you? A. Oh, it was to pay the expenses of the custodian and of the department in attorneys' fees, and various expenses connected with the federal case.

Q.55. What attorneys' fees were to be paid out of this 30 per cent? A. Well, that I wouldn't know, sir.

Q.56. Did you recall that the Missouri attorneys were to be paid out of it? A. I wouldn't know what attorneys were to be paid. In fact, I don't remember the names of all of the attorneys that were interested in it.

Q.57. Did you know how much or appreciate in round figures about what the total impoundment was in all the cases that are involved? Wasn't it around $9,000,000.00? A. Something of that sort. I wouldn't remember the figure.

Q.58. And you knew as a member of this committee substantially what the impoundment was? A. Oh, yes, at the time I was very familiar with it.

Q.59. Therefore, the 30% would amount to something like $2,700,000.00, wouldn't it? A. Yes.

Q.60. That was set aside to pay all expenses, as you understood it? A. Yes.

Q.61. And including lawyers' fees?

General Bullitt: Are you asking as to what his information was before he saw the contract of May 18, 1935, or after?

The Special Master: He hasn't asked him if he ever saw that contract.

General Bullitt: How is that?

The Special Master: There has been no testimony as to whether the witness ever did see such a contract.

General Bullitt: I wanted to know whether your questions related to a period prior to May 18th or after.

Q.62. (By Judge Henson) Now, Mr. Bell, how soon after this compromise was made was it that you got a report on it, such as you have been outlining here? A. Well, I wouldn't remember that. The records, of course, of the Subscribers' Committee would show that, but I wouldn't remember without perhaps going into our files, and maybe I could find a report from the committee, the Western Actuarial Bureau, which was sent out to all of the companies.

Q.63. Well, you saw the contract shortly after Street made it, didn't you? A. Never saw the contract.

Q.64. You never did see it? A. No, sir. To my knowledge, I don't remember ever seeing any contract at all. All I know was the results.

Q.65. Was the contract brought back and filed with the Actuarial Committee? A. I wouldn't know that, sir. I don't remember.

Q.66. Well, you were a member of the committee. Did you ask that that be done? A. No.

Q.67. So far as you know, the contract never was filed with the committee then? A. I wouldn't know, sir.

Q.68. But how soon after the contract was made was it that you understood that there was 30 per cent set out for the payment of expenses? A. I can't remember, sir, when that was. This was a long, drawn out, complicated sort of a thing, and simply as a member of the committee I wouldn't be familiar with all of those details.

Q.69. Now, Mr. Bell, isn't it a fact that Mr. Street reported the results of that contract and in a general way, the terms of it to you fellows very shortly after it was signed? A. Very likely.

Q.70. And then that he also reported there was a hitch in getting it through the state court and the federal court was slow in approving it. Don't you recall that during the summer of 1935? A. I don't remember any detail, sir, of any of those things.

Q.71. Didn't you take any interest whatever in it? A. Well, I took a natural interest in the results, but as

a fact neither I or, I think, any other member of the committee was familiar with any of the details of what Mr. Street did and when he made his reports. The minutes of the Subscribers' Committee should show if any report was made and what it was because there was no report ever made to me verbally by Mr. Street.

Q.72. Well, do you remember Mr. Folonie making a report about July 6, 1935? A. Well, he may have, sir, but if he did, he made it to the committee and that record should be in the minutes.

Q.73. Are you aware of the fact that the secretary of that committee can't find that letter, and so testified yesterday? A. Well, I am not familiar with any testimony of anybody.

Q.74. In the minutes of the meeting of March 19th, reading a little farther in the last sentence it says, "In other words, the conferences which he has had were approved," that is the conference that Mr. Street said he had had with Missouri authorities, if I understood you? A. Yes.

Q.75. Those conferences were approved, "and he was requested to proceed with those contemplated"—that is, "those conferences contemplated—'with power.'" What did you understand that to mean? A. He was authorized to go ahead and make the compromise. That was the power, as I understood it.

Q.76. That is what you understood by "with power"? A. Yes.

The Special Master: Just any kind of a compromise?

A. Any kind of a compromise which he had submitted in this previous report.

The Special Master: Didn't you have any idea at all the limits within which he was given power to make a compromise?

A. Well, the compromise, as I understood it, as a member of that committee, was that it was to be on an 80-20 basis.

The Special Master: You understood that before you gave him power to make the settlement?

A. Oh, yes, that is my recollection of it, sir.

The Special Master: Was it your recollection that your understanding was that all of the expenses should be paid by the companies?

A. I remember of no discussion or reference to expenses at that time whatsoever, sir.

Q.77. (By Judge Henson) Exhibit 18 seems to be the minutes of the meeting of July 9th. You were present at that meeting, weren't you? A. Yes, sir.

Q.78. That says, "Reports of Attorney Folonie on Progress of Case." Do you recall any reports that Mr. Folonie made on the progress of the case at that time? A. No, sir, I do not.

Q.79. Was Mr. Folonie present? A. Oh, yes, he would be present.

Q.80. What did he say? A. Well, I don't remember what he said.

Q.81. Now, apparently— A. (Interrupting) Many reports were made, sir, from time to time upon Missouri, as naturally would be. I can't segregate in my mind any particular report or the character of any report which Mr. Folonie may have made. He made a great many during the years of this litigation.

Q.82. Now, Mr. Bell, I mean to be entirely fair with you. A. I hope you will be.

Q.83. Assuming a contract to bear date of May 18, 1935, here is a report from Folonie July 9, 1935. Now, didn't Folonie tell your committee exactly what that compromise was in all its terms? A. Well, presumably he must have, sir. I don't remember distinctly. I don't remember any specific report which he made.

Q.84. You don't say that Folonie didn't report all of that at that meeting, do you? A. No, I don't remember what report he made.

Q.85. The reference further is there in the third line and fourth line, "And his report of July 6th was read by the Chairman." His report of July 6th, do you recall that being read, his report of July 6th being read at that meeting? A. I don't recall it, but presumably it was.

Q.86. You don't recall what it contained? A. No, sir.

Q.87. You have no impression as to whether it detailed this settlement or not? A. No, presumably it did, but in some respects, but I don't remember it.

Q.88. You are not able to say that it didn't? A. No.

Q.89. You haven't Mr. Folonie's letter or report of July 6th, have you? A. No, I haven't it.

Q.90. You wouldn't know where to tell me to get it, would you? A. No place except in the office of the secretary of the committee.

Q.91. The secretary has testified that he can't find it, and I am asking now if you have any idea where it could be found. A. No, sir, none in the world.

Q.92. There was a memorandum of the proposed settlement filed. Do you have that memorandum? A. I haven't it, no.

Q.93. Would you have any idea where to tell me to get it? A. No place but in the files of the secretary of the committee.

Q.94. Can you recall anything that was contained in that memorandum? A. I have no idea what the memorandum was.

Q.95. Mr. Bell, didn't that memorandum set out that the settlement was made and signed on May 18th or substantially that date, and didn't it say that 50 per cent of this money went to the companies, 30 per cent went to Street and Folonie as trustees to pay all expenses, including attorneys' expenses, and 20 per cent to the policyholders? Now, didn't that report show that? A. I presume it did, sir; that I have no recollection of.

Q.96. You wouldn't testify that it didn't, would you? A. No, because I don't know.

Q.97. The chairman further brought up the fact that the Kansas City Fire and Marine had run an ad in the Kansas City papers O. K.'ing this settlement, and that he wanted to pay the expenses of it, and you fellows authorized it, didn't you? A. I don't remember that, sir.

Q.98. Don't you remember anything about the favorable publicity that some of the companies went in there to back up this compromise with those newspaper ads that were in the newspapers, and it was brought up in your committee that your committee should really pay the expense of that? Don't you recall that? A. Why, I have no recollection of a detail of that sort in connection with my serving on that committee.

Q.99. Well, do you remember anything about favorable newspaper comments? A. None in the world, sir.

Q.100. In the Kansas City papers or Springfield papers? A. No, sir, I have no recollection of anything of that kind being discussed.

Q.101. Do you recall any discussion of doing the same in the St. Louis papers and a discussion about which of the three, if all of them should be? You don't recall anything of that kind? A. No, sir, I do not.

Q.102. Mr. Bell, I believe you said that you are western manager of the National Fire? A. Yes, sir.

Q.103. I will ask you what checks, if any, you gave or authorized to be given to Street and Folonie or to Mr. Street in connection with the Missouri rate settlement? A. Yes, sir. Do you want me to tell this story as I remember it or do you want to ask the questions?

Q.104. Well, I will ask the questions.

The Special Master: Answer that question first, and then if you think it needs explanation, you may say so.

A. I gave a check under date of May 7th to Hicks and Folonie.

Q.105. (By Judge Henson) The year, please? A. 1935, to Hicks and Folonie for $5,000.00, and under date of March 27, 1936, I gave a check to C. R. Street as agent for $13,655.11.

Q.106. What were the circumstances causing you to make that check of May 7, 1935, and what induced you to do it? A. Mr. Street came to me and said that there were some attorneys' fees and expenses that had to be met and which he didn't have the money to meet them, and I don't distinctly remember whether it was the federal cases or what cases, and he asked me to advance to Hicks and Folonie $5,000.00.

Q.107. Are you reading from a memorandum? A. I am reading from the check.

Q.108. Oh, yes, all right. A. That is all; I have no memorandum except the one I have got up here, sir.

Q.109. All right, go ahead. A. And I distinctly remember this transaction, that he wanted this money to be advanced to Hicks and Folonie, that there would be undoubtedly an assessment necessary to pay expenses, and at which time this $5,000.00 would be deducted from the amount of that assessment.

Q.110. Now, you made the check, the $5,000.00 check to Hicks and Folonie? A. Yes, sir.

General Bullitt: Now, wait a minute. If you are going to try to state what the paper says, state it a little more fully. It is Hicks and Folonie, Attorneys.

Judge Henson: Well, pardon me. I will have these two checks identified.

(Photostatic copies of checks, handed to the reporter, were marked for identification as "Defendants' Exhibits 33 and 34, EFM.")

Q.111. Just to get the record straight, I will ask you if Exhibit 33 is the $5,000.00 check you have been talking about? A. Yes, sir.

Q.112. This is a photostatic copy of it? A. Yes, sir; this is too (indicating).

Q.113. With the endorsements? A. Yes, sir.

Q.114. I will show you Exhibit 34 and ask you if that is the $13,655.11 check? A. Yes, sir.

Q.115. And endorsements on it? A. Right.

Q.116. Which you have been talking about.

The Special Master: Are you offering them in evidence, Judge?

Judge Henson: I will, yes, sir.

The Special Master: I am having a hard time.

Judge Henson: Yesterday you remember we said we would put all of that in in three minutes, and I was rushed.

I offer Exhibits 33 and 34 both in evidence.

The Special Master: You have only asked him about the first one. Let me see the first one.

(Which said Defendants' Exhibits 33 and 34, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

NATIONAL FIRE INSURANCE CO. OF HARTFORD

No. 82811

Chicago, Ill. May 7 1935

Pay to the order of Louis L. Golonie, Esq. $5000.00

Five Thousand and 00/100 Dollars

TO THE CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO

CHICAGO, ILLINOIS

G. W.

Harris Trust & Savings Bank

PAY TO THE NORTHERN

for deposit

Hicks & Folonie

pay to the order of

HARRIS TRUST AND SAVINGS BANK

CHICAGO, ILL.

HICKS & FOLONIE

PAID JAN 28 1935

CHICAGO, ILL.

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National Fire Insurance Company of Hartford	$10,073.06
Colonial Fire Underwriters	322.56
Total National Fire Insurance Company of Hartford (Incl. Colonial Fire Underwriters)	10,395.62
Mechanics and Traders Insurance Company (Connecticut)	1,644.88
Franklin National Insurance Company of New York	448.37
Transcontinental Insurance Company (New York)	666.24
	13,655.11

WESTERN DEPARTMENT

NATIONAL FIRE INSURANCE CO. OF HARTFORD No 89353

Chicago March 27-1936

Pay to the order of C. R. Stiet Treas. Agent $13655 11

Dollars

TO THE FIRST NATIONAL BANK OF CHICAGO (8-1) CHICAGO, ILLINOIS (8-1)

C. R. Stiet

W. H. Koenig

C. R. Stiet agent

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

MAR 28 1936

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Q.117. (By Judge Henson) Mr. Bell, referring to the $5,000.00 check, I notice that is made to Hicks and Folonie, Attorneys? A. Yes, sir.

Q.118. Why was that made to them? A. I don't know, except Mr. Street requested me to make it payable to Hicks and Folonie, Attorneys.

Q.119. The face of the check doesn't show what it is for, does it? A. No, sir.

Q.120. No memorandum of any kind on the face or back? A. No, sir.

Q.121. Did he tell you the urgency of having this check at that time? A. No, sir.

Q.122. Did you communicate with your office? A. No, sir.

Q.123. The home office before doing this? A. No, sir.

Q.124. Did you communicate— A. (Interrupting) I have sole authority as manager of the Western Department to take care of all expenses, legal expenses and all matters of litigation.

Q.125. Then nobody from the home office conferred with you nor you with them orally or over the telephone or otherwise, by letter or otherwise on the subject of this check? A. Not directly, sir, at that time.

Q.126. How is that? A. I say, not directly at that time.

Q.127. Did you report the incident to the home office? A. It was reported in the usual account which we render at the end of every month as to all receipts and expenditures.

Q.128. Did any letter go making any explanation of it? A. No, sir.

Q.129. Was any explanation ever given to the home office about it? A. No.

Q.130. At any time? A. No, except in perhaps— there was no official letter, no letter of this item, but only naturally in the audit of your accounts out here all these things came out and are explained if there was any explanation asked for.

Q.131. The home office didn't ask you for any explanation of this at all? A. No, sir.

The Special Master: Who makes that audit and when?

A. It is made by our own accountants from our home office.

The Special Master: How often do they make the audit?

A. Once a year.

The Special Master: And that audit then was not made until the regular accounting period?

A. The audit is usually made in April of each year.

The Special Master: Succeeding the time of this check would be the first time that the auditors would see it?

A. Yes, sir.

The Special Master: Was any question asked about it when the audit was made?

A. No, just one of the customary checks we issue or give to attorneys for expenses, etc. We have a great deal of litigation, as you know. We pay a great many attorneys' fees.

The Special Master: Yes, but you always show what for, don't you?

A. Absolutely.

The Special Master: This time you didn't?

A. This was Missouri litigation, and so appears on our records.

The Special Master: Go ahead, Judge.

Q.132. (By Judge Henson) Now, Mr. Bell, why didn't you make this $5,000.00 check to C. R. Street? A. Because he asked me to make it to Hicks and Folonie, Attorneys.

Q.133. I believe you say that he told you he had a lot of expenses including attorneys' fees? A. Yes, sir.

Q.134. I want to see if I understand your report to the home office. It would be a sheet of the transaction of the month's business, wouldn't it, the income? A. Well, I think you have a copy of it right there of our journal sheets and ledgers which show that.

Mr. Berger: I think we just have the two cash sheets here.

A. Well, that would be the original entry and the other, of course, would go into the ledger accounts.

Q.135. (By Judge Henson) If I understand you, however, you make a report once a month to the home office? A. Yes, sir.

Q.136. That shows every figure of the income and outgo of your office? A. Yes, sir.

Q.137. Your department? A. Yes, sir.

The Special Master: It is just a copy of your books, isn't it?

A. That is all, the accounts.

The Special Master: I mean the entries are just literally copied off of the books?

A. Yes, sir.

Q.138. (By Judge Henson) No letter of explanation accompanied it as you say? A. No, sir.

Q.139. And nobody ever called you up or wrote you or made inquiry as to what it was? A. Not about that check, no, sir.

Q.140. And nobody ever questioned it? A. No, sir.

Q.141. Not even the auditor when he made his audit? A. No, sir.

Q.142. Did you ever voluntarily mention it to the home office? A. Why, I must have in discussing the Missouri settlement with our home office later on, in a personal conference. I may have mentioned these checks, yes, unquestionably did, as a matter of interest.

The Special Master: Did you have any independent recollection of such a conversation?

A. No, sir, we have conferences twice a year with the home office people in which all sorts of matters are discussed, and the policies of the company.

The Special Master: All you are trying to say is that it would be reasonable that such a thing would come up and probably did, but you don't testify that it did?

A. Nothing specific came up with it, or any authorization in connection with the payment of that check or the making of that check.

Q.143. (By Judge Henson) If any officer in the home office with authority had made any objection to it, you would remember it, wouldn't you? A. Oh yes, most assuredly.

Q.144. Referring to Exhibit 34, this $13,655.11 check, that check seems to be dated March 27, 1936. A. Yes, sir.

Q.145. That is made to C. R. Street? A. C. R. Street.

Q.146. The first time it was made to C. R. Street, Trustee, wasn't it? A. Yes, sir.

Q.147. And then the word "Trustee" was obliterated and the word "Agent" written after his name. Have you any explanation as to why that was done? A. Only this: That we were advised that assessment of 5 per cent for expenses, attorneys' fees, the amount of which was—well, I have a memorandum here to be sure I am

right—was $18,655.11, and I told our comptroller to make out a check for that amount, less $5,000.00 which we had advanced or paid to Hicks and Folonie, and, therefore, our check was for $13,655.11.

Q.148. You say when you got notice of a 5 per cent assessment? A. Yes, sir.

Q.149. Whom was that from? A. From Mr. Street.

Q.150. Was that discussed in the Actuarial Committee too or where did you get it? A. Well, I was told by Mr. Street that this 5 per cent assessment, and which I presume was so, went out to all companies interested or involved in this Missouri litigation in the federal cases.

Q.151. You knew that would raise something like $450,000.00 if all companies paid? A. Well, I didn't think about that end of it. It was 5 per cent of our impounded premiums.

Q.152. Did he write you a letter or did he just telephone you about it? A. He telephoned me.

Q.153. There is no letter in your files? A. No, sir.

Q.154. Anywhere from Mr. Street or anybody else calling for this 5 per cent assessment? A. No, sir, in fact, there was very little correspondence ever between Mr. Street and me about this matter or any other matter.

Q.155. What other explanation did he give you, if any, for the need of this 5 per cent? A. No explanation whatsoever, except that there would be assessment on all companies involved of 5 per cent of their impounded premiums.

Q.156. Did you discuss that subject of 5 per cent assessment with your home office? A. No, sir.

Q.157. Or anyone in authority? A. Not at the time.

Q.158. When did you ever discuss it with them? A. I discussed it with them in a matter of casual information the next time I had a conference with our home office.

Q.159. Was there any objection raised by the home office? A. None in the world.

Q.160. As to this payment? A. None in the world.

Q.161. Was it reported in the same manner the $5,000.00 item was during the month in which you paid it out? A. Yes, sir.

Q.162. Was that reported— A. (Interrupting) Well, wait a minute. I am quite sure it was because

every transaction for any one month appeared in that month's account.

Q.163. When that report went to the home office— A. Yes.

Q.164. Showing this pay out— A. Yes.

Q.165. Did any letter go along explaining the pay out? Was any objection ever raised? A. No objection ever raised.

Q.166. To that at all? A. No.

Q.167. Did the auditor raise any objection a year later? A. No, because it was shown as expenses of litigation, attorneys' fees, legal expenses in connection with the Missouri litigation, and which, incidentally, is not an unusual thing, you know, over the years. There is nothing unusual about expenses for Missouri litigation.

Q.168. Yes, but there was 30 per cent, amounting to more than two and a half million dollars set out for that very purpose, as you understood it? A. No, I didn't understand that that was the purpose of it. 30 per cent was in the hands of the trustees to pay expenses and to make further remittances to the companies from time to time.

Q.169. What expenses did you think that that 30 per cent included? You just said it did include them? A. I wouldn't know and I never asked the question, presumably. I don't know whether I am supposed to give my opinion or not, but presumably the trustees, the expenses which they would pay were limited as to federal cases or state cases or other cases. I don't know.

Q.170. Now, I don't believe you have explained the change here in this check of drawing lines through the word "Trustee" and writing the word "Agent" out there? A. That check was delivered to Mr. Street, C. R. Street, Trustee. Mr. Street explained that he was only one of two trustees. Therefore, he asked me to change that to "Agent." The check was sent back and I crossed out the word personally, "Trustee," and wrote in "Agent" and initialed it.

Q.171. Your initial appears right there? A. Yes.

Q.172. And you did that at his request? A. Yes, sir.

Q.173. Why didn't you put in the name of the other trustee, or write him a new check? A. Because he said he would like to have a check payable to him and he having had the authority to pay all expenses, etc., to settle this litigation. I made it that way.

Q.174. Why didn't you make a check there to Hicks and Folonie? Those are the ones you made the other one to? A. Because I was requested not to. I was requested to make it to Street, the second check.

Q.175. All right. Now, you knew that Folonie and Street were the trustees, didn't you? A. Yes, sir.

Q.176. Why didn't you make it to them? A. Because Street asked me to make it to him.

Q.177. You said a while ago that Street objected because he was only one trustee? A. Yes.

Q.178. Now, couldn't you have included the name of the other trustee and satisfied him? A. I might have, but I never thought about doing it.

Q.179. Did he ask you to change that check and to put that word "Agent" on there? A. Yes, sir.

Q.180. It reads, "C. R. Street, Agent," that check? A. Yes, sir.

Q.181. Whose agent is he? A. Presumably he was the agent of all of the insurance companies involved in this litigation.

Q.182. By the word "Agent" did you mean he was agent of your company or agent of all of them? A. Agent of our company and all companies involved.

Q.183. Yes. Do you remember whether your company got 50 per cent of its impoundments back? A. Oh, yes; it was sent to us by the Insurance Department, as I remember it, or the custodian. I wouldn't know about that detail.

Q.184. That was done shortly after February 1, 1936, wasn't it? A. I suppose so. I don't know the dates.

Q.185. Did you afterwards get a check from the trustees in the sum of 11 per cent? A. Yes, sir.

The Special Master: From the trustees, is that where he got it?

Judge Henson: Yes, that is true, from the trustees, 11 per cent out of the 30 per cent.

Q.186. Now, was it in that letter that the request was made for this 5 per cent check?

General Bullitt: Read that question again. (Questions referred to were read by the reporter.)

A. I wouldn't know.

Q.187. (By Judge Henson) Well, the request for a 5 per cent check was made at substantially the same time that you got the 11 per cent from the trustees? A. The same date, as I remember it.

Q.188. The same date? A. That shows here, yes, sir.

The Special Master: Let me see if I follow this. The same day that you got a check from Mr. Street and Mr. Folonie as trustees amounting to 11 per cent of your impounded funds, you got a separate request from Mr. Street?

A. For 5 per cent.

The Special Master: For 5 per cent or 5-11th of it?

Mr. Bullitt: Not 5-11ths.

Mr. Berger: It is 5 per cent.

Mr. Bullitt: It was $373,000.00.

The Special Master: I understand he got 11 per cent, and 5 per cent back, that is 5-11ths of the remittance.

Mr. Bullitt: Not at all, the remittance, 5-11ths would be nearly—

The Special Master: No, 11 per cent.

Mr. Bullitt: 11 per cent was $373,000.00.

The Special Master: Well, that is what he said, anyhow, and if he did, he ought to change his statement.

A. I should change it if that is your interpretation. We got a check for 11 per cent of our impounded premiums.

The Special Master: Then you got that from Folonie and Street as trustees?

A. As trustees, then at the same time we got a request for 5 per cent of our impounded premiums, less this $5,000.00 which I had previously paid them.

The Special Master: Then you are not talking about the same base when you say 11 per cent and 5 per cent, then?

A. Well, the assessment was for 5 per cent, but we having advanced the $5,000.00—

The Special Master: Oh, I understand that. You got a credit for that?

A. Yes, in this credit on this 5 per cent assessment. Is that clear?

The Special Master: I was trying—yes, I really know what happened, but the way you stated it first, it sounded like they asked for more than half of what you had gotten.

A. Oh, yes, I see.

The Special Master: You weren't talking about the same per cent, were you?

A. Not at all.

The Special Master: Thank you; that straightens it up.

(Whereupon, discussion was had off the record.)

The Special Master: Mr. Street did ask that you return nearly one-half of that remittance that you got on that same date from the two trustees?

A. He asked for $18,655.11, which was 5 per cent of our impounded premiums.

The Special Master: Yes.

A. We having advanced $5,000.00.

The Special Master: You subtracted?

A. We subtracted that and paid him $13,655.11.

The Special Master: Yes, but the other was advanced, but what I am getting at is, that advance was to be corrected later on. He was calling on you for 5 per cent.

A. It was to be adjusted on the assessment which was to be made later.

The Special Master: And at the time you got your remittance from the trustees, he asked you to immediately return to him 5-11ths of it?

A. No.

The Special Master: Yes, it is, of the remittance.

A. Is that the way it works out?

The Special Master: 5-11ths.

A. 5 per cent less the $5,000.00.

The Special Master: Well, I know, but I am talking about separate for the fact you made it out.

Q.189. (By Judge Henson) Well, you got 11 per cent of your entire impoundments? A. Yes.

Q.190. And at the same time got a request to pay 5 per cent of your entire impoundments back to them? A. That is correct.

Q.191. Did that arouse any suspicion in you? A. None in the world in my mind, sir.

Q.192. Didn't it occur to you that the 5 per cent should have been deducted from the 11 per cent and send you the net? A. I never even thought of it.

Q.193. You never asked him anything about it? A. I never asked him a question about it. If you knew Mr. Street like I did, you never would have asked him that kind of a question.

Q.194. What kind of a fellow is Mr. Street? A. Was.

Q.195. Go ahead and tell us. I want it in the record anyway. A. Mr. Street was a man of very strong princi-

ples. He occupied a most unusual position in our business. There never has been in the history of our business, to my knowledge, and I have been in it 50 years, a man that occupied the same position he did.

The Special Master: What was that position?

A. He was looked upon as one of the most honorable, one of the most capable men that was ever in the fire insurance business in this country. He was a sort of a Hitler, you might say.

The Special Master: Did he rather dominate the committee?

A. He dominated everything that he was connected with, and I say that advisedly.

The Special Master: Did he have a disposition in the committee to kind of take things in his own hands and run them his own way?

A. Absolutely, and anybody that opposed him, well—

The Special Master: Came out second best?

A. I'll say so.

The Special Master: Then Hicks and Folonie turned over 11 per cent, and he immediately demanded practically a half of that remittance. Did that occur to you that he was trying to go around Folonie?

A. No, because we knew that Hicks had been given the authority solely.

The Special Master: You mean Hicks or Street?

A. I mean Street had been given the authority solely to negotiate this settlement and pay such expenses, and so on, incidental to a compromise.

The Special Master: But you knew it was his habit to grasp power?

A. Oh, absolutely.

The Special Master: You knew under the trust agreement both Folonie and Street were the trustees?

A. Yes, sir.

General Bullitt: You said Hicks and Folonie.

The Special Master: No, Folonie and Street were trustees.

A. Yes.

The Special Master: You knew it was his habit to grasp power. Didn't it occur to you he was trying to do something without Mr. Folonie's consent or cooperation?

A. No, it did not. Knowing Street as well as I did, having dealt with him for so many years, I never questioned him.

The Special Master: Did you ask Mr. Folonie anything about it?

A. I don't remember of talking to Folonie about it at all.

The Special Master: Go ahead.

Q.196. (By Judge Henson) So it was the disposition of Street which you have just described that caused you to obey the order and send in these remittances; is that right? A. Absolutely.

Q.197. You did it because you were afraid not to? A. What is that?

Q.198. You did it because you were afraid not to? That is my question. A. I wouldn't say "afraid," no. I am not afraid of anybody.

Q.199. Then why did you do it? A. I did it because he asked it. I knew that to oppose him or to question his act, he would look upon as a personal affront and I knew that this assessment—he had told me before when he got this $5,000.00 that he would have to make an assessment for expenses. Therefore, when the assessment came in, I paid it without question.

Q.200. If it had been anyone else that had made this request for the 5 per cent except Mr. Street, you would have questioned it and asked him something about it, wouldn't you? A. Very likely.

Q.201. Your pay outs in your company, you always have to know what they are for, don't you? A. Certainly.

Q.202. You don't pay out $5,000.00 at one time and $13,000.00 at one time just haphazardly in your company? A. Not haphazardly but this was for legal expenses, as stated to me.

Q.203. Well, when the $5,000.00 check was given, had the settlement been made, do you know? A. I wouldn't know. I don't know when that settlement was made, the date of it.

Q.204. He didn't tell you that the settlement had been made, in your earlier examination you said so? A. No.

Q.205. What was the urgency of paying lawyers before the service was performed? A. I don't know.

Q.206. Didn't that arouse any suspicion on your part? A. No.

Q.207. Well, then, when you paid the $13,000.00, why, you knew the settlement had been made and had gone through, didn't you? A. Yes, sir.

Q.208. And you knew that the 30 per cent was for the payment of expenses? You were bound to have known that when you made this last check. A. Not for the payment alone. It was to go into the hands of trustees to pay expenses and to remit what balances there were left and they hadn't collected everything from the custodian at that time which the custodian owed the companies, and further remittances were to be made to the companies.

Q.209. They collected enough to pay you 11 per cent of your impoundment, didn't they? A. Yes.

Q.210. Didn't it look strange to you that there was a 30 per cent fund to pay expenses and Street was calling for 5 per cent again? A. I never thought of that.

Q.211. And you had just had 11 per cent already handed to you? A. I never even thought of it.

Judge Henson: I guess that is all.

The Special Master: I want to ask him a question. When Judge Henson was asking you these questions, he kept referring to the minutes of meetings and particular reports and your answer was in each instance that you didn't remember the particular report, that you couldn't separate in your mind what information you got out of one report and out of another?

A. That is right.

The Special Master: And that you couldn't separate whether you got it on this date or the other date?

A. No, sir.

The Special Master: You didn't mean to say that you had no recollection of any activity on that committee; you didn't mean that, did you?

A. Oh, no, not at all. What I meant to say and meant to infer, was that so many reports, every meeting there were reports from Mr. Folonie or from Mr. Street or a discussion, and I can't now segregate.

The Special Master: You can't separate the various sources of your information?

A. No.

The Special Master: But you do remember that you did serve on that committee?

A. Yes.

The Special Master: You do remember that the committee authorized a settlement?

A. Yes, sir.

The Special Master: And that first it was, roughly speaking, on an 80-20 basis?

A. Yes, sir.

The Special Master: You do remember the settlement had been made?

A. Yes, sir.

The Special Master: And that the 20 per cent went to the policyholders, but only 50 per cent went immediately to the companies; you remember that?

A. Yes, sir.

The Special Master: And that 30 per cent was to be held up by trustees?

A. Yes, sir.

The Special Master: For various purposes including paying the costs and expenses on both sides?

A. Yes, sir.

The Special Master: You do remember that?

A. That is all a matter of record.

The Special Master: Well, but I don't want to depend on the record because the record doesn't—

A. (Interrupting) I mean my own office records, that part of it.

The Special Master: I say they do not help you much, but I am trying to find what you do remember and you do remember that you got the information as to the terms of the settlement shortly after it was signed and before it was approved by the court.

A. I suppose that report was made to the committee. I don't remember just when we got it.

The Special Master: I am not depending on that. You know that you got that information?

A. Yes, sir.

The Special Master: Of course, as quick as a settlement was agreed upon it became notorious that a settlement had been arrived at?

A. Yes.

The Special Master: You did take interest, I suppose, in what the nature of that settlement was?

A. Naturally.

The Special Master: And somehow or other you got that information?

A. Yes, sir.

The Special Master: Shortly after the news came out that a settlement had been made?

A. Yes, sir.

The Special Master: That is all.

Q.212. (By Judge Henson) Do you recall any time that the committee authorized the borrowing of money

there to pay some of these lawyers? A. No, sir. That was just one of the details, I presume, that came up in connection with this litigation. It is in the minutes here.

Q.213. I am showing you Exhibit 20 and ask you if you remember anything—you appear to have been present at that meeting? A. Yes.

Q.214. That meeting of the Actuarial Committee? A. Yes.

Q.215. Do you remember there where they authorized Mr. Street as agent for the companies and personally and Mr. Terry as manager and personally, to borrow $150,000.00 there in November, 1935, to pay lawyers? A. I don't remember it.

Q.216. Did that make any impression on you at the time of the meeting? A. No, sir.

Q.217. You didn't remember that you had yourself paid Hicks and Folonie $5,000.00 in this check you have talked about?

The Special Master: Which do you mean, that drawing of the money?

Judge Henson: When he was borrowing the money in 1935.

Q.218. Didn't you recall you had already paid $5,000.00 yourself for attorneys' fees, and didn't enter any protest? A. I never made any protest.

Q.219. You just don't remember anything about that, do you? A. No, sir.

Judge Henson: All right; that is all.

Cross Examination by Mr. Bullitt.

XQ.220. Now, Mr. Bell, did you state that you had never actually seen the compromise agreement dated May 18, 1935, that receipt for it, all of the details of the compromise? A. I said I had no recollection of having seen it, sir.

XQ.221. Was there ever any discussion in the Subscribers' Actuarial Committee when you were present about Mr. Street wanting to raise some money by assessments on the companies in connection with this settlement? A. I don't remember of any such.

XQ.222. Did your committee at each meeting have the minutes of the preceding meeting read? A. No, sir.

XQ.223. Your books showed that this $13,000.00 advance was for legal expenses in the Missouri litigation? A. Yes, sir.

XQ.224. Did you ever talk to any executive of any company other than your own concerning the suits that were brought for those companies about this sixteen and two-thirds per cent rate controversy? A. Only in committee, in the Subscribers' Committee, but outside—

XQ.225. (Interrupting) Outside of the Subscribers' Actuarial Committee did you ever talk to any executive of any other company? A. Not to my knowledge.

XQ.226. Did you ever have any telegrams or telephone calls or letters from the executives of any other company regarding the bringing of those suits or the authority to bring them or the authority to settle them? A. No, sir.

XQ.227. Did you ever have any personal telegraphic or telephonic or written correspondence with your executives of your own company about bringing these suits in Missouri or the settlement of them? A. No.

XQ.228. Until after it was over? A. No.

XQ.229. Now, at the time that you gave this final $13,000.00 check on March 27, 1936, had the $150,000.00 debt that your committee had authorized to be created by borrowing money from some St. Louis banks to pay legal expenses, I say, had that $150,000.00 been repaid to the banks? A. I wouldn't know.

XQ.230. To refresh your recollection, isn't it a fact that it was not until April 15, 1936, that the $150,000.00 debt to the Mercantile Commerce Bank & Trust Company was paid? Does that refresh your memory at all about that? A. I have no recollection about that.

The Special Master: Until what date, did you say?

Mr. Bullitt: April 14, 1936.

A. I have no recollection about that.

Mr. Bullitt: All right. The point of that was at the time he got this money they owed this $150,000.00 to the bank. All right.

The Special Master: Was that the one that had been made by the Missouri Inspection Bureau?

Mr. Bullitt: That is the money—well, it was raised. The November 27, 1935, minutes of the Subscribers' Actuarial Committee say that they authorized Street as agent for the companies and personally, and P. W. Terry as manager and personally to sign and endorse $150,000.00 note to the Mercantile Commerce Bank for the purpose of liquidating attorneys' bills, etc.

The Special Master: Yes, I know, but is it admitted Mr. Terry at that time was the head of the Missouri

Inspection Bureau, which is the rating bureau in Missouri?

Mr. Bullitt: Yes, I suppose that is admitted.

The Special Master: They at that time were raising the moneys to carry on these expenses?

Mr. Bullitt: They hadn't raised it. They borrowed $150,000.00 from the bank.

The Special Master: I say, that was the function?

Mr. Bullitt: Oh, I suppose so.

The Special Master: I suppose the evidence will finally show who paid that.

Mr. Bullitt: It was paid by the trustees; they paid it on April 14, 1936.

Judge Henson: I think that is true.

Mr. Bullitt: But at the time this money was collected from Mr. Bell, that debt was outstanding for attorneys' fees. That is all I want to ask him.

Re-Direct Examination by Judge Henson.

RDQ.231. Mr. Bell, I believe you told General Bullitt that the home office didn't authorize the suit, that you authorized it or who did authorize it? A. I had entire charge of all litigation matters in this Western Department.

The Special Master: You mean for your own company?

A. For my own companies, nobody else, of course.

RDQ.232. (By Judge Henson) Then your check, your two checks about which I have examined you was the pay-in of 5 per cent for your own company and the allied companies? A. Yes, sir.

RDQ.233. Were you ever reimbursed by the allied companies? A. Well, that is a matter of accounting at our home office in the general—under a group.

RDQ.234. Then you reported to the home office and they did the allocation? A. That is right, allocations of premiums and expenses of every character.

RDQ.235. I want to ask you again before we leave, is Mr. Layton connected with your home office? A. He is president of our company, sir.

RDQ.236. What are his initials? A. F. D.

RDQ.237. F. D. Layton.

The Special Master: To make his question clear, I want to ask him a couple of questions. Your allied companies, operating as a fleet, operate under common management, do they?

A. Yes.

The Special Master: And when there is an expense to be met that is common to them all, why, initially the advance is made by the leading company?

A. The National.

The Special Master: Then the accountants take that and prorate it according to the interest each one has, usually on the basis of written premiums in the territory that incurred the expense, is that right?

A. Yes, sir.

RDQ.238. (By Judge Henson) Now, I asked you if your home company made any protests on these payments. Did any of these allied companies ever make any protest on this paying of the 5 per cent by means of your two checks? A. They don't because—

The Special Master: They are all the same officers, aren't they?

A. It is all the same thing.

The Special Master: They are all the same officers.

A. The stock of those companies is all owned by the parent company; the home office is the same, the management is the same.

Judge Henson: It is just as good getting it one way as the other.

The Special Master: They are different corporations, but they are the same people.

Judge Henson: Well, I hadn't developed that, you see.

(Witness excused.)

J. C. McKOWN, being produced, sworn and examined as a witness, on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. Will you state your name, please? A. J. C. McKown.

Q.2. What official position do you hold in the St. Paul Fire and Marine Insurance Company? A. I am secretary.

Q.3. You are secretary? A. One of the secretaries.

Q.4. What position did you hold in that company in the years 1935 and 1936? A. Secretary.

Q.5. Who is the president of the company? A. Mr. C. F. Codere is president now.

Q.6. Who was president in 1935? A. F. R. Bigelow.

Q.7. Is Bigelow living? A. Yes, sir.

Q.8. Where does he live? A. St. Paul.

Q.9. What position does Mr. Dosdall hold now? A. He is also a secretary.

Q.10. And was he in that same position in 1935 and 1936? A. He was.

Q.11. Is that same thing true of the Mercury Insurance Company, an allied company of yours? A. "Yes" would answer all those questions with reference to the Mercury.

Q.12. Who is in charge of your western department? A. Mr. Dosdall.

Q.13. You are in charge of what? A. I am in charge of all of the underwriting east of the Mississippi River and Canada.

Q.14. Those last two answers are true of the Mercury and true of Dosdall for the same period? A. Yes.

The Special Master: Are those your allied companies?

A. Yes, sir.

The Special Master: Under common management?

A. Yes, sir.

Q.15. (By Judge Henson) Operate out of the same office? A. Yes.

The Special Master: That was true in 1935 and 1936?

A. Yes, sir.

Q.16. (By Judge Henson) You had a suit involving the sixteen and two-thirds percent rate in the State of Missouri, didn't you? Do you know anything about that? A. I do know in a general way, but having no jurisdiction over it, I never interested myself in the details of it. I just knew as a matter of general information that we had this suit.

Q.17. Did this Subscribers' Actuarial Committee here at Chicago handle that and represent your companies? A. Yes, sir.

Q.18. Both of these companies? A. Yes, sir.

Q.19. Who was president of that Actuarial Committee? A. You mean now or then?

Q.20. Then. A. Mr. Street.

Q.21. C. R. Street? A. C. R. Street.

Q.22. Mr. Charles R. Street. You mean Mr. Charles R. Street? A. Yes, sir.

Q.23. Did you know Mr. Charles R. Street? A. Yes, sir.

Q.24. How long had you been acquainted with him? A. Oh, a matter of ten or fifteen years, probably.

Q.25. Did you hear that there was a settlement of the Missouri rate controversy or the rate case down there? A. Why, I heard of it, yes.

Q.26. When did you hear about that with reference to when it was made? A. I couldn't tell you.

Q.27. Do you know who told you? A. No, I don't know. I might have read it in the journals. No one ever told me direct it was settled.

Q.28. Did you have anything to do with the settlement yourself? A. Nothing whatever.

Q.29. Who acted for you? A. Mr. Dosdall. You mean from our office?

Q.30. Yes. A. Mr. Dosdall.

(Photostatic copies of letter and memorandum, handed to the reporter, were marked for identification as "Defendants' Exhibits 35 and 36, EFM.")

Q.31. Mr. McKown, I show you Exhibit 35, Defendants' Exhibit 35. A. Yes, sir.

Q.32. Do you remember receiving that about the time it was written. A. I never saw it.

Q.33. You never saw it? You saw it lately, I suppose, when these— A. (Interrupting) I haven't seen it at all.

Q.34. Then Exhibit 36, you don't know whether that exhibit was attached to it or not then, do you? A. No, sir, I never saw that.

Q.35. All right. Who would have seen that, Mr. Dosdall? A. Yes.

Judge Henson: It looks like the logical thing would be to withdraw him and examine Dosdall.

The Special Master: According to his testimony he was not in charge of the western department. This transaction under investigation occurred in the western department; unless you think perhaps he might have heard other officials talk about it and want to get at it that way, you won't get anything from this witness because he had nothing to do with it.

Judge Henson: There is one letter that is addressed to him. I would probably have to recall him for that, but it would be so illogical, but I would like to withdraw the witness and take Mr. Dosdall and recall Mr. McKown.

(Witness withdrawn.)

C. A. DOSDALL, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. State your name, please. A. C. A. Dosdall.

(Photostatic copies of letters, handed to the reporter, were marked for identification as "Defendants' Exhibits 37 and 38, EMF.")

Q.2. You live at St. Paul, Minnesota? A. Yes, sir.

Q.3. What is your official position with the St. Paul Fire and Marine Insurance Company and the Mercury Insurance Company? A. I am secretary in charge of the fire business west of the Mississippi River.

Q.4. That includes Missouri, of course? A. Yes, sir.

The Special Master: For what allied companies in addition?

A. Well, we operate three companies in St. Paul, the St. Paul and the Mercury Insurance Companies. They are fire companies identical in the class of business they write.

The Special Master: Did you name—

A. (Interrupting) We operate the St. Paul Indemnity, which is a casualty company.

The Special Master: Only two in the fire business?

A. Yes, sir.

The Special Master: Was that true in 1935 and 1936?

A. Yes, sir.

The Special Master: Were they under common management?

A. Yes, sir.

The Special Master: You had charge of the business in that same capacity for both of them?

A. Yes, sir.

The Special Master: All right.

Q.5. (By Judge Henson) Now, Mr. Dosdall, you are aware of the fact there was a Missouri rate controversy pending in the state and federal courts down there in Jefferson City? A. Yes, sir.

Q.6. I believe your two companies were in the federal court cases? A. Yes, sir.

Q.7. Did you hear of the negotiations for the settlement prior to the time the settlement was made? A. We were advised that negotiations were being made for a settlement of the controversy.

Q.8. Who advised you of the negotiations being made for the settlement of the controversy? A. I presume it came from the Subscribers' Actuarial Committee.

Q.9. That is here in Chicago? A. Yes.

Q.10. Of which Mr. Street was chairman? A. Yes, sir.

Q.11. Did the advice come from some of the members or from Mr. Street or a letter from the committee? A. Well, I can't answer that offhand. I imagine the communication came from the committee.

Q.12. Have you any communication in your files? A. I haven't anything with me.

Q.13. Well, you heard the controversy was settled down there in Missouri, did you? A. Yes, sir.

Q.14. When, with reference to the time it was settled, did you get this information? A. I think the first definite word—I haven't got it here.

Q.15. Well, you undoubtedly heard of it shortly after it was settled? A. I think it was that letter when the distribution was made, I think 50 per cent to the companies.

Q.16. How is that? A. 80 per cent to the companies. It was 80 per cent to the companies and 20 per cent to the assureds.

Q.17. Then how was the 80 per cent divided? A. Well, we got 50 per cent of the total fund.

Q.18. What became of the 30 per cent? A. The 30 per cent was supposed to be used to meet litigation and to pay the state expenses that it incurred, to reimburse the state.

Q.19. You knew this shortly after the settlement was made, did you? A. That is my recollection, the way that thing was handled.

Q.20. Now, did you know in a general way what the 30 per cent would amount to? A. Well, nothing other than the general knowledge of information that had appeared in the newspapers that some $10,000,000.00 or something like that, was involved.

Q.21. Or if it was around $9,000,000.00, 30 per cent would be $2,700,000.00 would be involved for expenses? A. That is right.

Q.22. Now, Mr. Dosdall, I show you Defendants' Exhibit 35, a photostat of a letter. I will ask you if that came to your hands. A. That is my stamp. It is kind of blurred. I saw it all right.

Q.23. You received that about— A. (Interrupting) March 9th.

Q.24. March 9, 1936, that is the date of the letter. A. March 13th. The stamp shows better on mine.

Q.25. What came with that letter, if anything? A. Those two checks that are referred to in the note.

Q.26. The two checks that are referred to in the letter? A. Yes.

Q.27. One to the St. Paul Company and one to the Mercury? A. Yes.

Q.28. They were in the letter? A. Yes, sir.

Q.29. Was anything else in the letter? A. Not that I recall. Maybe this is part of it (indicating).

Q.30. I show you Defendants' Exhibit 36. Now, ignoring this side over here (indicating) because here is the paper, I will ask you if that memoranda didn't come along with the letter. A. I have a copy of that memorandum, whether it was with that letter—that is right.

The Special Master: I am sorry, Mr. Dosdall, but I can't hear you

A. I say, I have a copy of that memorandum here. It is all attached to the file. I presume it was with that letter.

Q.31. (By Judge Henson) Well, that memoranda reads, "Send me check for 30 per cent and trust me, C. R. S." A. Yes, sir.

Q.32. That is C. R. Street, isn't it? A. That is C. R. Street's own writing.

Q.33. You know his handwriting and his initials, do you? A. Yes.

Q.34. When you got that request there to "send me 30 per cent and trust me," what did you do?

The Special Master: Judge, I still don't know whether you are introducing your exhibits as you go along. You refer to them and—

Judge Henson: Pardon me. I am at fault.

Mr. Bullitt: He doesn't say what exhibit; he just says "Exhibit."

The Special Master: If you are not putting them in this testimony will be wholly unintelligible.

Judge Henson: I offer Exhibits 35 and 36.

(Which said Defendants' Exhibits 35 and 36, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

171

WESTERN DEPARTMENT
CHICAGO

Great American Insurance Company New York

C R STREET
VICE PRESIDENT

G D GREGORY
SECRETARY

CHICAGO March 9, 1936.

We enclose check for $ (see below), being 6% of the amount of your impounded premiums in Missouri as of May 1, 1935.

This is a distribution out of the 30% of the fund turned over to us as Trustees for the discharging of company liabilities in connection with this rate litigation - we think this can be done without reducing the fund below the limit of safety.

C. R. STREET
R. J. FOLONIE
Trustees.

ST. PAUL FIRE AND MARINE INS. CO.
MAR 1936
ART

St. Paul Fire & Marine Insurance Co. $4946.14 1483.84

Ketury Insurance Co. 1598.45 — 479.54

D35

172

Date MAR 31 1936 No. 11763

Mercury
Insurance Company

Disbursement Voucher

B R Street Agent

$1,330 35

Check NO. 1658 First Nat'l Bank

Check NO. Bankers Trust Co.

ACCOUNT CHARGED

EXPENSE Legal Expense - Fire

LOSS EXPENSE

AGENCY DEPT.

MARINE "

HAIL "

AUTOMOBILE DEPT.

SALARY

TAXES

PRINTING DEPARTMENT

Send me ck for 30% and trust me—

CRS

1936

Q.35. (By Judge Henson) What did you do when you got the letter with that slip on it to "send me 30 per cent and trust me"? A. There is my letter dated March 13th, of which I suppose you have a copy.

(Letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 37, EFM.")

Q.36. I show you Defendants' Exhibit 37, that is your answer? A. That is the answer.

Judge Henson: Now, I offer Defendants' Exhibit 37 in evidence.

(Which said Defendants' Exhibit 37, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

174

Mr. C.R. Street,
P.O. Box 758,
Chicago, Illinois.

March 13,193[illegible].

Dear Mr. Street:

Re: Missouri Impounded Premiums

Enclosed are the checks asked for in the memorandum which was received attached to your letter of the 9th.

Yours truly,

D:SAH

Secretary.

Encl.

D37

(Letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 38, EFM.")

Q.37. Then I show you Defendants' Exhibit 38. Now, that is a letter to Mr. McKown.

Mr. Bullitt: State what it is.

Judge Henson: I am trying to tell you. I resent being called on so much. You have interfered with the examination of this other witness a while ago.

Mr. Bullitt: Well, look here, now, wait a minute. I want to get along very easily with you, but, of course, I am entitled to see it. I don't want to ask you to hold up—

The Special Master: Well, just do it in the ordinary way. After this when you offer an exhibit in evidence show it to the other party and let him make an objection if he wants to and if he does not—

Judge Henson (Interrupting): All right.

The Special Master: That is the ordinary way of handling it and that is the only way.

Q.38. (By Judge Henson) I will show you Defendants' Exhibit 38 and ask if your company received that. A. Yes, sir.

Judge Henson: I offer Defendants' Exhibit 38 in evidence.

(Which said Defendants' Exhibit 38, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

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W. STERN DEPARTMENT
[illegible]
POST OFFICE BOX 758
CHICAGO

Great American Insurance Company New York

C R STREET
Vice President

G D GREGORY
Secretary

CHICAGO March 30, 1936.

ST. PAUL FIRE AND MARINE INS. CO.
MAR 31 1936
G. A.
SECRETARY

Dear Mr. McKown:

I enclose herewith check for the Mercury, $1330.37; St. Paul, $4121.75, on account of Missouri impounded premiums.

This makes 11% of your impoundments as of May 1st last which you have received.

I also return you two checks payable to me and to Folonie as Trustees.

The situation has changed since I spoke to you, and have been to New York where a number of the "big boys" met and I came back with Home check for $34,000 (they had previously put up $15,000), Continental, $23,000 (they had previously put up $15,000). and others, all payable to C. R. Street, Agent.

Please send me Mercury check for $1330.35 and St. Paul check for $4121.75 expense, this being within a few cents of the same amounts as the checks now sent you.

All checks are in except these and two distant companies I have yet been unable to reach.

This simply increases the amount you will receive in the final distribution, a matter of bookkeeping, as it were, but it cannot be paid out of the Trustees' account - no bribery but legitimate expenses which we cannot put in our report to the court.

Full report will be made at the April meeting.

With best regards, I remain

Legal Expense - Missouri Impounded

Yours very truly,

C R Street

Mr. J. C. McKown, Secretary,
St. Paul Fire & Marine Insurance Co.,
111 West Fifth Street,
St. Paul, Minn.

D38

Q.39. Now, Mr. Dosdall, are they numbered? I want to examine you about Defendants' Exhibit 35 of March 9th. A. I have the correspondence in its natural sequence.

Q.40. Get the letter of March 9, 1936. A. Yes.

Q.41. If I understand you, the checks mentioned in that were 6 per cent of the impoundments of both companies? A. Being 6 per cent of the amount of our impounded premiums in Missouri as of May 1, 1935?

Q.42. Yes, sir. You have checked that and that is 6 per cent of your impoundments, isn't it? A. My recollection is that there was some slight difference there, but I think those are the checks that came back later on, aren't they?

Q.43. Well, we will get to that then. A. Well, that is O. K.'d by me, anyway. My stamp is on there, so I take it for granted the amounts checked out all right.

Q.44. What did you understand by the last paragraph there, that this is distribution out of the 30 per cent? A. Well, that is the 30 per cent that was to be used for litigation and expenses.

Q.45. And you understood that that at least was 6 per cent that would not be needed for litigation expenses, didn't you, and they were paying it to the company? A. Yes.

Q.46. The letter says so and that is the way you understood it? A. That is the reasonable conclusion to come to.

Q.47. The 30 per cent that was not needed was to go to the companies, wasn't it? A. The 30 per cent which was needed?

The Special Master: To the extent that it was not needed.

A. Yes, what was left over, in other words.

Q.48. (By Judge Henson) Your companies both received the 50 per cent that was provided in the settlement, didn't they? A. Yes, sir.

Q.49. You notice that the letter says this was for discharging the companies' liability and that was what it was for and you so understood it. Now, how—

The Special Master: Wait a minute, he didn't answer that question.

A. "This is a distribution out of the 30 per cent of the fund turned over to us as trustees for the dis-

charging of company liabilities in connection with the rate litigation—we think this can be done without reducing the fund below the limit of safety."

The Special Master: That speaks for itself.

Q.50. (By Judge Henson) You so understood it. You saw it at the time? A. Yes.

Q.51. How did you interpret this Defendants' Exhibit 36, which reads, "Send me check for 30 per cent and trust me"? A. Just as it reads.

Q.52. 30 per cent of what were you to send him, as you understood it? A. 30 per cent of those amounts that are shown in—

Q.53. (Interrupting) Exhibit 35? A. At the bottom of letter dated March 9th. You can figure it out here and extend it.

Q.54. The pencil figures are the extensions? A. That is our cashier's extension.

Q.55. If you will turn to the letter of March 13th, Exhibit 37, you wrote that letter to Mr. Street, I believe? A. I did.

Q.56. And you say, "Enclosed are the checks asked for in the memorandum which was attached to the letter of the 9th." What checks were those and what did you enclose? A. The checks for these amounts, $1,483.00 and $478.94, which was 30 per cent of those amounts specified in the bottom of that letter.

Q.57. In other words, it was 30 per cent of the 6 per cent checks? A. That is right.

Q.58. That is the way you interpreted it and that is what you did? A. That is right.

Judge Henson: I will now ask that Defendants' Exhibits 39 and 40, being voided checks, be marked.

(Said checks, handed to the reporter, were marked for identification as "Defendants' Exhibits 39 and 40, EFM.")

Q.59. I show you Exhibits 30 and 40 and will ask you if those were the checks which you sent in the letter of March 13th, $478.94 and $1,483.84? A. Yes, sir.

Q.60. These are photostats of those checks? A. Yes, sir.

Mr. Bullitt: You mean the two cancelled checks?

A. Yes, sir. The one on your left is Exhibit 40 and the one on your right is Exhibit 39.

The Special Master: Are you offering those in evidence?

Judge Henson: Yes, just a minute. I now offer Exhibits 39 and 40.

(Which said Defendants' Exhibits 39 and 40, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

ST. PAUL FIRE AND MARINE
INSURANCE COMPANY
ST. PAUL, MINN.

No. 67647 ST. PAUL, MAR 13 1936 19

BANKERS TRUST COMPANY
16 WALL STREET, NEW YORK

Pay to the order of C. B. Street & P. J. Fo[illegible] $ [illegible]

[illegible] DOLLARS

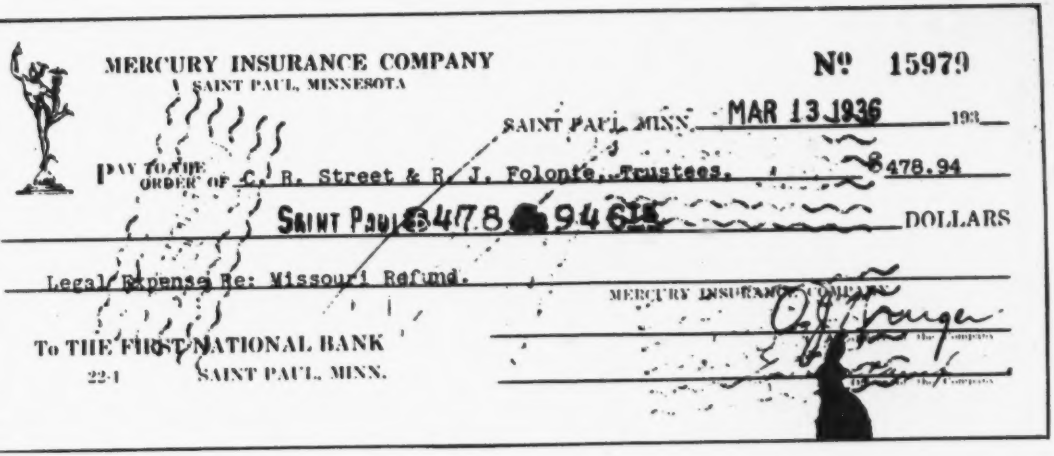
Legal Expense per Treasurer's Refund.

CANCELED

CANCELED

CANCELED

J 39



MERCURY INSURANCE COMPANY
SAINT PAUL, MINNESOTA

No 15979

SAINT PAUL, MINN. MAR 13 1936 193

PAY TO THE ORDER OF C. R. Street & R. J. Folonte, Trustees. $478.94

SAINT PAUL 478 94/100 DOLLARS

Legal Expense Re: Missouri Refund.

MERCURY INSURANCE COMPANY

To THE FIRST NATIONAL BANK
22-1 SAINT PAUL, MINN.

Q.61. (By Judge Henson) Now, if you, Mr. Witness, will turn to the letter of March 30th, that is Exhibit 38, I first want to direct your attention to that third short paragraph of that letter, "I also return you two checks payable to me and to Folonie as Trustees." Does that refer to Exhibits 39 and 40? A. Those two checks that we were just talking about.

Q.62. I will ask you now if you got the checks referred to in Defendants' Exhibit 38, the letter of March 30, 1936, the one for the Mercury for $1,330.37 and to the St. Paul for $4,121.70 as stated in this letter. Those two checks came in that letter along with the two checks that he was returning? A. "I also return two checks payable to me and to Folonie as trustees."

Q.63. All right. Now, did you understand with the receipt of the two checks payable one to the Mercury and one to the St. Paul mentioned in the first line of that letter, were the payment that you had already received, the 6 per cent back in the letter of March 9th, and this would make 11 per cent of the impounded premiums as he says in the letter? A. "This being within a few cents of the same amounts as the checks now sent you." That is what he had reference to, I guess. I don't see—

Q.64. (Interrupting) No, I am talking now about the checks. A. This makes 11 per cent; I see it up here.

Q.65. The checks received on March 9th? A. That is right.

Q.66. And the checks he encloses, mentioned in the first paragraph of this letter together makes 11 per cent of your impounded funds, the letter says so and you so understood it, didn't you, at the time? A. "I enclose herewith check for the Mercury $1,330.37, St. Paul, $4,121.78 on account of Missouri impounded premiums. This makes 11 per cent of your impoundments as of May 1st last which you have received." That is the way we understood it, yes.

Q.67. These figures in the first line of Exhibit 38 were really 5 per cent and the other checks on March 9th were 6 per cent, that made the 11 per cent, isn't that right? That is correct? A. That is possible. The figures are right, anyway; I know that.

Q.68. When he returned your two checks, these two checks over there marked 39 and 40 that you afterwards voided, the two checks made payable to Street and Folonie as trustees, why did you void those checks as

they appear on Exhibits 39 and 40 to have been done? A. He sent those checks back and asked for new checks.

Q.69. Is it on account of his request that is made there later in this letter, this Exhibit 38, that you voided them? A. He enclosed those other checks, also returned two checks "payable to me and Folonie as trustees."

Q.70. That is evidently these two voided checks? A. Those are the two voided checks that we were just talking about. "Please send me Mercury check for $1,330.35 and St. Paul check for $4,121.75, expense, this being within a few cents of the same amounts as the checks now sent you."

Q.71. My question was, why did you void those two checks, 39 and 40? A. Because he asked for others.

Q.72. Asked for others in the place of them? A. It was to replace them, yes.

Q.73. Were you satisfied with the explanation that he made as a reason for giving him new checks instead of the old ones? A. Well, I can best answer that by calling your attention to my letter of April 1st enclosing the checks.

Q.74. All right. Then I will just have that introduced.

Judge Henson: I am having the letter of April 1st marked, General.

(Said letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 41, EFM.")

Q.75. (By Judge Henson) Your letter of April 1st has been marked as Exhibit 41? A. Yes, sir.

Judge Henson: I am now having Street's letter of April 2nd marked, General.

(Said letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 42, EFM.")

Q.76. (By Judge Henson) Now, I show you Exhibit 42 and is that the letter you received from Mr. Street in reply to the letter of April 1st? A. In acknowledgment of the letter of April 1st.

Judge Henson: I offer in evidence Exhibits 41 and 42.

(Which said Defendants' Exhibits 41 and 42, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

Mr. C.R. Street,
310 South Michigan Avenue,
Chicago, Illinois.

April 1, 1936.

Dear Sir:

Re: Missouri Impounded

Enclosed find checks for the amounts specified in your letter dated March 30th. The other two checks returned are being voided.

The procedure you suggest seems to be somewhat of an involved way of doing business, but we take it for granted that circumstances justify your request. Remittances are being sent you, therefore, although we admit frankly that we do not know yet what it is all about.

Yours truly,

Secretary.

RsSAN

Encl.

STERN DEPARTMENT
[illegible] MICHIGAN AVENUE
POST OFFICE BOX 750
CHICAGO

Great American Insurance Company
New York

C R STREET
VICE PRESIDENT

G D GREGORY
SECRETARY

CHICAGO April 2, 1936.

ST. PAUL FIRE AND MARINE INS. CO.
APR - 3 1936
C. A.
SECRETARY

Dear Mr. Dosdall:

Will tell you all about it at the Association meeting, at which I propose to make a detailed report.

In the meantime can assure you it is all right.

Yours very truly,

C R Street

Mr. C. A. Dosdall, Secretary,
St. Paul Fire & Marine Insurance Co.,
St. Paul, Minn.

D 42

Q.77. Now, the letter of March 30th, please, Mr. Dosdall. I note that Mr. Street writes there, "The situation has changed since I spoke to you, and have been to New York where a number of the 'big boys' met and I came back with Home check $34,000.00 (They had previously put up $15,000.00), Continental, $23,000.00 (They had previously put up $15,000.00), and others, all payable to C. R. Street, Agent." What did you understand him to be talking about there; that is, who are the "big boys" and what did you understand that paragraph to mean? A. I imagine he had reference to the men that he met in New York, whoever they were. I don't know. I have no means of knowing.

The Special Master: You have assumed when he said "Home" that he meant the Home Insurance Company, did you?

A. The Home, yes, the Home Insurance Company of New York.

The Special Master: That is one of the biggest insurance companies?

A. That is right, is the biggest.

Q.78. (By Judge Henson) And when he mentioned the Continental, you assumed that was the Continental Insurance Company and their group? A. Yes, sir.

Q.79. Now, who did you think he meant by "big boys"? A. I took the letter just as it reads, the heads of the more prominent companies that he had contacted in New York.

Q.80. For what purpose? A. Something in connection with this expense item.

Q.81. Well, what in connection with the expense item? A. How he was handling it, I presume.

Q.82. Did you read the figures there where they had previously paid $15,000.00 and he got— A. (Interrupting) We have no means—

Q.83. (Continuing) —and he got $34,000.00 more? A. We have no means of verifying those figures.

Q.84. I understand that, but what impression did that make on your mind? A. Well, I can still answer that best by referring you to my reply in that letter dated April 1st. Understand, this litigation was of many years standing.

Q.85. How is that? A. I say, you understand this litigation was of many years standing, and it was highly technically involved and it was utterly impossible almost for the average layman to keep in contact with all phases

of it, and the whole thing functioned through this Subscribers' Committee of which Mr. Street was chairman, and we all had confidence in him and had no reason to question the way he was handling it. He had been handling it from the start and knew all of the angles of it and we had to rely on him for information.

Q.86. Now, Mr. Dosdall, the voided checks which you returned were 30 per cent of a 6 per cent refund? A. That is the way it checks out.

Q.87. And the checks he called for you to send to him about the fifth paragraph there, that was 5 per cent of the entire impounded premium, wasn't it?

Mr. Berger: Judge, if I might interrupt because you are getting confused; it is the entire impounded premiums of May 1, 1935.

Judge Henson: Well, that is true. I will stipulate that with you somewhere in this record.

Mr. Berger: Because I say it might be confusing somewhere along the line because the total impoundings were larger than the rest.

A. There were so many different dates involved.

Q.88. (By Judge Henson) Well, now, Mr. Dosdall, let's get down to this letter right here. He sent back to you the checks that you had written for 30 per cent of 6 per cent? A. That is right.

Q.89. You sent back to him 5 per cent? A. That is right. I sent back to him the checks that he asked for.

Mr. Bullitt: Where do you get the 30 per cent of 6 per cent or 5 per cent either one?

Judge Henson: Well, that is back—

The Special Master: Yes, that is what it shows.

Mr. Bullitt: But that isn't 30 per cent of what he says, as far as I can figure.

The Special Master: That is the way I figured it.

The Special Master: That is what it is, approximately one and eight-tenths percent of the entire premiums, but those checks were not cashed.

Q.90. (By Judge Henson) Now, he doesn't seem in this letter to have explained that perhaps he meant to call on you for 5 per cent but did call on you for 30 per cent of 6 per cent. He doesn't explain that and he doesn't say that he wants these checks, the Mercury of $1,330.35 and the St. Paul for $4,121.75, expense, he doesn't say that he wants them payable to C. R. Street, Agent.

The Special Master: That is a statement, Judge. It doesn't call for an answer.

Q.91. (By Judge Henson) Here is my question: Why did you make the checks payable to C. R. Street, Agent? Why did you put the word "Agent"? A. If you will refer back to that previous paragraph, "and others, all payable to C. R. Street, Agent."

Q.92. That is the way the others made theirs to C. R. Street? A. "Please send me Mercury and St. Paul checks, this being within a few cents of the same amounts of the checks now sent you."

Q.93. Then it is on the strength of the fact that the others had made them to C. R. Street that you made them to C. R. Street? A. That is right.

Q.94. Now, because he had called for them. Did you have any conversation by telephone or any other communication at all from Mr. Street about it? A. I did not.

Q.95. Or anyone from his office? A. I did not.

Q.96. Or the New York office or anybody else? A. I did not.

Q.97. You will observe that the checks he is sending you, the Mercury and the St. Paul, are within a few cents of the same amount he asks you send back. A. One is two cents and the other is a difference of three cents.

Q.98. Yes, sending back substantially the same sums? A. That is right.

Q.99. Now, that aroused your curiosity, didn't it? A. Well, it was not the difference in the amounts; two or three cents would not justify going to the trouble to try to find out where the difference come in, but the procedure did arouse my curiosity.

Q.100. And in your letter of April 1st, Exhibit 41, you told him that the procedure seemed involved? A. That is right.

Q.101. What did you mean by the rest of that sentence, "But we take it for granted that circumstances justify your request"? A. That is that he had charge of it and we assumed and had confidence in him, and we assumed that the way he wanted to handle it was all right and proper and justified.

Q.102. What circumstances did you think he had—what circumstances did you have in mind? You are the author of that letter? A. That is right. I had in mind the circumstances that because the previous checks had been made payable to Street and Folonie as trustees, and

he asked for these checks to Street as agent, in substitution thereof, that is—

The Special Master: You couldn't understand why it was necessary to make that distinction?

A. That is why. It wasn't the difference in the amounts, but it was just that change in procedure.

Q.103. (By Judge Henson) Well, there was a substantial procedure in the amounts of the voided checks returned and of the checks that he called on you to give back. A. Well, that was a different distribution entirely.

Q.104. Mr. Dosdall, further in the letter, D-38, the letter of March 30th, it says, "This simply increased the amount which you will receive in final distribution." You paid back to him 5 per cent which would increase the amount? Was that the way you understood it? A. That is the way I understood it.

Q.105. As a matter of bookkeeping? A. That is right.

Q.106. In other words, he sends you 5 per cent check and calls for you to return them and the difference of two or three cents in each check is the only difference? A. That is right.

Q.107. Well, how did you figure that that would increase what you would get on final distribution? A. Based on his statement there.

Q.108. You just took his statement for that? A. I took his statement for it.

Q.109. In other words, he sends out to St. Paul the equivalent of 5 per cent and calls for you to send your checks back for about the same amount? A. That is right.

Q.110. Didn't it occur to you he might as well have kept the money? A. I never gave it a thought.

Q.111. Did that arouse any suspicion any more than you have given in your letter of April 1st? A. Not any more than that.

Q.112. You never held the matter under consideration at all but answered the same day, didn't you, that you got the request? A. There are 31 days in March. The letter was dated the 30th and approved by me the 31st, which is the next day, and the check went out the following day, April 1st.

Q.113. What did you understand him to mean there by the words, "no bribery but legitimate expenses which we cannot put in our report to the court?"

Mr. Bullitt: Just read the sentence.

Judge Henson: I thought—

Mr. Bullitt: The eight words immediately before that you omitted. Just read that so we can get the context.

The Special Master: I know, but he wants to know what he meant by those words.

Mr. Bullitt: It makes it unintelligible. You have never read the words, "It cannot be paid out of the trustees' account."

The Special Master: Yes, he just read that.

Mr. Bullitt: Just to say that—

Judge Henson (Interrupting): We will get that straight.

Q.114. Mr. Dosdall, it says that this is "a matter of bookkeeping, as it were, but it cannot be paid out of the Trustees' account." What did you understand that to mean? A. Just what it says.

Q.115. That what couldn't be paid out of the trustees' account? A. That is the statement that he made.

Q.116. What is it that couldn't be paid out of the trustees' account? A. These amounts.

Q.117. That he called on you for? A. Yes.

Q.118. He couldn't pay them out of that? A. That is what he says.

Q.119. What was it he was paying? A. He says legitimate expenses.

Q.120. Legitimate expenses? A. Yes, sir.

Q.121. You have already testified that you knew that that 30 per cent of the impounded fund was available for that, didn't you? A. Well, that is the original 30 per cent, that was the intention.

Q.122. That original 30 per cent would be over two and a half million dollars, wouldn't it, and that fund was adequate enough that he had sent you some two or three weeks before, 6 per cent that would never be needed in legitimate expenses? That is true, isn't it, on March 9th he sent you the 6 per cent dividend? A. That is right, I guess. It is pretty hard to—

Q.123. (Interrupting) Turn to your Defendants' Exhibit 35. A. It says is a distribution out of the 30 per cent fund turned over to the trustees.

Q.124. He says it is a matter of 6 per cent, and as a matter of figures, it is. A. I don't know, except I presumed it had been checked.

Q.125. Well, I think you had said so. Now, on March 9th, would that be the next day or March the 10th you received this 6 per cent which you knew and he knew would never be needed for expenses of this fire litigation? Now, that is true, isn't it? A. That is the statement he made, yes.

Q.126. On March 30th he is calling on you for 5 per cent payable to him as agent. As you say, he says for legitimate expense which can't be paid out of the trustees' account. Now, then, what possible expense could it have been that couldn't have been paid out of the trustees' account? A. That would be just idle speculation on my part. He was the man that was in charge of it and we had our eye on him for information, and I never had any reason to question any statement. I had known Mr. Street for many years and I never had any reason to question any statement he ever made to me.

Q.127. Had you in that short time forgotten that you had the information that the trustees' account was rich enough that you could have 6 per cent of your impoundments out of it that would never be needed for expenses, and now here about three weeks later he is calling on you for 5 per cent of your impoundments for expenses? Didn't you remember that when you got this letter dated March 30th? A. That change was made because he asked us to do it. He says in there somewhere that circumstances have changed, or words to that effect, doesn't he?

Q.128. Read that part that says a thing about the circumstances changed? A. "The situation has changed since I spoke to you." Now, that letter is addressed to Mr. McKown. It was turned over to me by Mr. McKown, which happens frequently in our office.

Q.129. Yes, but let's don't get off of the subject. What is the situation that is changed? A. That is just his statement that circumstances have changed, and I took it for granted that that justified the procedure he suggested.

Q.130. Have you been able—were you at the time you received this letter, D-38 of March 30th—have you been able to figure out any possible expense that could have been for that couldn't have been paid out of the trustees' account? A. Well, if you have faith and confidence in a man, and he made a statement—

Q.131. (Interrupting) No, just answer my remark. A. (Continuing) —you take his word for it.

Q.132. Have you figured out anything about what that expense could have been? A. He said it is legitimate expense and we took it for granted that it was legitimate expense.

Q.133. Have you figured out what legitimate expense would be that couldn't be paid out of the trustees' account? A. It was perfectly evident since it came out in the papers.

The Special Master: No, that isn't what he wants to know.

Q.134. (By Judge Henson) Well, at that time when you got this letter what did you think, what idea did you have of any legitimate expense that couldn't have been out of the other account which was rich enough to have already yielded your company some funds? A. I can't say that I give that angle of it any particular thought.

Q.135. Now, isn't it a fact that you didn't want to know, Mr. Dosdall, about it? A. Well, I wouldn't say that.

Q.136. You didn't want to know too much of what he was doing? A. I don't think my letter indicates that that follows that I didn't want to know about it.

Q.137. Well, I appreciate what your letter there that follows says, but you have not very well explained what you mean by the circumstances in that letter of April 1st. You say he supposed the circumstances justified it. Now, what were the circumstances? A. The only thing that aroused my curiosity, as I explained before, was asking for these checks payable to Street as agent and in substitution of the checks that were payable to Street and Folonie as trustees.

Q.138. That did arouse— A. (Interrupting) That aroused my curiosity.

Q.139. Do you know whom Street was agent for? A. He was agent for the companies; he was acting.

Q.140. Including your company, did he? A. That is right. I took that for granted.

Q.141. You made that check payable to Street as agent to take the funds of your company to go out and use it as he pleased? A. He gave us his assurance it was being used for legitimate purposes.

Q.142. You trusted him on that? A. Yes, sir.

Q.143. That is why you paid it to him? A. Yes, sir.

Q.144. You let him take this money and use it as he pleased? A. Yes.

Q.145. You put no restrictions? A. We took it for granted it was to be used for legitimate purposes.

Q.146. You never called him and put any verbal restrictions on it? A. No.

Q.147. The whole authority is you turned him loose to do as he please with it, is that right? A. With his assurance that everything was all right.

Q.148. Right after, on the letter of March 30th there, I want to read you, "No bribery but legitimate expenses which we can not put in our report to the Court." Did that arouse any suspicion on your part? A. Doesn't it explain itself?

Q.149. Didn't it arouse any suspicion in your mind, that is what I asked you? A. Other than in some way it involved the procedure.

Q.150. I am asking you this part, "No bribery but legitimate expenses which we cannot put in our report to the Court." Did that arouse any suspicion on your part of any improper payment? A. When he says, "There is no bribery," that is a definite statement, isn't it?

Q.151. Yes. A. We had confidence in him and we accepted his definite statement on it.

Q.152. Had you ever suggested to him that you thought it was bribery? A. I did not.

Q.153. Had the word "bribery" been used in the public press or elsewhere? A. Not that I know of.

Q.154. Had anyone suggested bribery, as far as you know of, to Mr. Street? A. Not that I know of.

Q.155. You never had? A. I certainly hadn't.

Q.156. Do you know of any reason Mr. Street would put that in there, "No bribery but legitimate expense"? A. Not unless he wanted to justify the procedure that he was—

Q.157. (Interrupting) Now, Mr. Dosdall, isn't it a fact that he says "there is no bribery, but there is some legitimate expense we can't put in our report"? A. That is right, he makes that statement.

Q.158. That still didn't arouse any suspicion in your mind at the time? A. Except in connection with the whole procedure.

Q.159. Did you discuss this with Mr McKown or any of your superiors or other officers? A. I discussed it with the president of the company. I showed him the letter.

Q.160. Who is the president of the company you discussed it with? A. Mr. Codere.

Q.161. Who? A. Mr. Codere, C. F. Codere; he is the president of the company.

Q.162. What did he say about it? A. Well, I don't recall just the words, but I showed him the letter and the general assumption is that we decided to do what he asked us to do.

Q.163. Well, I didn't ask you that. I want you to tell me what you said to Mr. Codere when you brought it up. A. I can't tell you; that is too long ago.

Q.164. Well, the substance of it, what did you say to him? A. That is three years ago and—

Q.165. (Interrupting) Well, now, you remember— A. (Interrupting) I showed him that letter. I presume I showed him that letter.

Q.166. Well, now, did you show him or did you not? A. It is a matter of company policy and usually we discuss these things, show these things and discuss them and decide what to do about it.

Q.167. You never had a situation like this before in your company did you? A. No, sir.

Q.168. Wasn't this unusual? A. It certainly was. That is what I said, it is unusual.

Q.169. Don't you remember discussing it with Mr. Codere? I believe you said you did discuss it with Mr. Codere? A. I think I said I presume I did.

Q.170. Did he approach you or you approach him? A. I would have approached him because the letter came to my desk.

Q.171. Give me the substance of what you said to him when you showed him the letter? A. My recollection is that I am not absolutely positive I showed him the letter, but that would be what I would usually do.

Q.172. This is such an unusual situation, is your memory that poor on it? A. I pride myself on having a reasonably good memory, but a lot of things come up in handling a big business and there are a good many conversations and discussions.

Q.173. Well, you wouldn't say that you just sent those checks back, $1,330.37, the Mercury check, and $4,121.75 St. Paul check? You wouldn't say that you didn't ask anybody else about it then? A. Well, I can't say.

The Special Master: Just a minute, he didn't answer the question.

A. I can't answer that definitely. I said before that I supposed I showed that to Mr. Codere; that would be

the ordinary procedure. That is a matter that is my responsibility. I don't know, probably Street asked us. We all had confidence in Street.

Q.174. Why would you have showed it to Codere? A. He is president of the company, my superior.

Q.175. Does he live in St. Paul? A. Yes.

Q.176. And you are not willing to tell us even the substance of the conversation you had with Mr. Codere?

Mr. Bullitt: I object to that.

Judge Benson: I will withdraw that.

Mr. Bullitt: Well, you better.

Q.177. (By Judge Henson) You only surmise that you did talk with him? A. That was my statement.

Q.178. So far as certainty is concerned then you paid these checks without consulting anybody, is that right? A. Yes, that is possible. That is possible.

Q.179. Is there anybody else around there you would likely have talked to about it? A. Well, I think these —the ordinary procedure would have been to have sent it back to the bookkeeping department for checking to make sure it was correct.

Q.180. This was an unusual situation. I am anxious to know whether you discussed it with anybody. A. Well, I can't answer you any more definitely than I have. If I discussed it with anybody it would have been with the president of the company, naturally.

Q.181. Now, let's refer— A. (Interrupting) But I don't recall; there was certainly nothing outstanding in the conversation, if we had any, anything that indelibly impressed itself on my mind.

Q.182. Did you know Mr. Street? A. I had known him for a good many years.

Q.183. I notice that he calls for these checks, reading right out of the middle of the exhibit, "Please send me Mercury check for $1,330.37 and St. Paul check for $4,121.75, expense." He has the word "expense" there for these two checks? A. That is right.

Q.184. Did that arouse any attention on your part or any curiosity? He is talking about expense. A. That is practically the same question you asked me before, isn't it?

The Special Master: I don't remember. You can answer it again, if he did. Did it arouse any suspicion or not? A. Nothing other than the general procedure, the change in procedure of handling it, and that is expressed in my letter that enclosed the remittances.

Q.185. (By Judge Henson) Well, Mr. Dosdall, what did you understand these large sums were raised for that are mentioned in the fourth paragraph of the exhibit? A. They would be used for legitimate expenses, just as Mr. Street assured us they were going to be used.

Q.186. Did you conceive any idea that these large sums—

General Bullitt (Interrupting): Just a minute. I object to the question because he is putting into the question the assumption they are large. They were small compared to the amount involved, really. That is just a characteristic situation, "these large sums." He does that all through.

Judge Henson: If the reporter will read you the question, I will buy you a hat if there was more than five words.

General Bullitt: I object to the word "large."

The Special Master: Let's see what he claims is large. Then if it is objectionable you can make your objection.

Judge Henson: It takes more time.

General Bullitt: You frame your questions according to law. There won't be any trouble.

The Special Master: Wait and see. He didn't finish it. There is no way to know.

Q.187. (By Judge Henson) Have you given all of the explanation you want to give as to your understanding of who the big boys were? A. I have given you all of the explanation that I can give.

Q.188. You had no superiors of either of your companies living in New York, did you? A. No, sir.

Q.189. There weren't any of your "big boys"? A. No, sir.

Q.190. And you understood it was the "big boys" of the other companies? A. It was presidents of the companies domiciled in New York.

Q.191. Are both of your companies St. Paul companies? A. Yes, sir.

Q.192. You knew and understood at the time you received this letter there had been some secret arrangements made by these "big boys" about these expenses? A. I did not.

Q.193. You knew nothing about it? A. I knew nothing about it.

Q.194. All right. Now, in answer, you answered him on April 1st by the Exhibit 41? A. That is right.

Q.195. I am not asking you about it, only just to call it to your attention. Mr. Street wrote you the letter that is marked Exhibit 42, didn't he, dated April 2nd? A. Yes, that was in acknowledgment of the other letter.

Q.196. He addressed this to Mr. Dosdall, that is true? A. That is right.

Q.197. The letter, it is Exhibit 42 and dated April 2nd, says, "Will tell you all about it at the Association meeting, at which I propose to make a detailed report." "Will tell you all about it." What do you understand by "it"? A. The settlement of the Missouri litigation.

Q.198. Didn't you understand he was going to tell you all about these checks and why he wanted them? A. I didn't understand it that way.

Q.199. Where is there in this correspondence any inference that made you think the "it" referred to the Missouri settlement? A. The whole thing is in regard to the Missouri litigation. It is all in connection with it.

Q.200. I know, but it was the Missouri settlement that he was going to tell you about. A. I took it from that he was going to make his report at the next meeting.

Q.201. Did he ever make that report at the associated meeting? A. Offhanded, I don't even know that I attended that meeting. I don't recall. If I was there and Mr. Street made any report, it was nothing to arouse anybody's curiosity.

Q.202. It was purely a financial report? A. I can't testify that I was at that meeting at all, so far as that is concerned.

Q.203. Well, the next time you saw Mr. Street did he make any explanation of it to you? A. I never had any discussion with Mr. Street about this matter at all, before or afterwards.

The Special Master: Did you ever see him again? A. Offhand, I can't remember. When did he die?

Judge Henson: February 1, 1938.

A. Well, I presume I saw him within those two years, yes.

The Special Master: Did you ever ask him about it?

A. I have never asked him about it and he never offered any explanation.

Q.204. (By Judge Henson) When you say the "association," what association is that? A. It is the Western Underwriters' Association.

The Special Master: How often does it have meetings?

A. Semiannually, spring and fall meetings.

The Special Master: Does it publish its reports?

A. The Western Underwriters' Association, they have reports here, I imagine.

The Special Master: You don't get a copy?

A. I think I have a copy at home. I think we all get copies.

The Special Master: Do you look them over to see what is going on?

A. We refer to them in the file.

Q.205. (By Judge Henson) You don't remember any report, ever seeing any report that would explain what you paid out this money for? A. It would not be in the Western Underwriters' Association meeting, anyway, because this rate litigation functioned through the Subscribers' Committee.

The Special Master: I know, but he said he was going to make a detailed report at the association meeting.

A. The Subscribers' Committee usually has a meeting at the same time, but that isn't incorporated in the meeting of the Western Underwriters.

The Special Master: I understand, but he said he was going to make a detailed report at the association meeting. Did you ever know about any such report having been made?

A. He doesn't say—yes, this does too.

The Special Master: Yes, he says he is going to make a detailed report. Did you ever see any such or ever look for one?

A. I don't recall ever having looked for it. Anyway, if there was a report it was purely a perfunctory report.

The Special Master: You never saw it if he did make one? You are talking about how much you trusted Mr. Street. You don't have any employees in your employ that you don't trust, have you?

A. No. They wouldn't be there if we didn't trust them.

The Special Master: You would get rid of them if you didn't trust them?

A. Yes, sir.

The Special Master: Do you allow them to waive making a report on account of that great trust that you place in your employees?

A. Well, in a thing that is so highly involved as this litigation has been, that extended over such a

long period of years, isn't it reasonable to, particularly for companies that are more or less out on the sidelines and not in the center of most of the activities in these organizations, wouldn't it seem reasonable to you to take for granted that the committees that you have chosen and trusted are responsible and capable of handling important matters of this kind in a proper manner?

The Special Master: That certainly would explain why you trusted them but it still wouldn't give you any idea of what your assets were, that whatever they did affected your assets greatly. Did you ever try to find out what your assets were?

A. We haven't had a final report on this yet, so far as that is concerned.

The Special Master: Did you ever try to find out what your assets were?

A. We are still in process and eventually that final report would have been expected, of course, to show what distribution was made. In our bookkeeping set-up, the Missouri impoundment was put on the books as agents' balances. At the annual statement time, they being more than ninety days old, they would have to be taken out of our assets.

The Special Master: That is right.

A. In other words, they are called "non-admitted assets."

The Special Master: I know that, but you kept watching them.

A. But the funds we received were credited to those outstanding balances.

The Special Master: Yes.

A. And the rest of it is still there as outstanding balances.

The Special Master: But the fact remains that the amount of the expense of the litigation would have a very, very material effect on what the companies' assets were. Now, you never followed it?

A. That report eventually would have come and we would expect it.

The Special Master: You didn't have any interest in it except to finally get it when it came?

A. I wouldn't say the mere fact that we kept it on our books. We had an interest in it. It is still on the books, so far as that is concerned.

The Special Master: You have local agencies that are strong financially, write lots of business, and you have great confidence in them, I suppose?

A. Yes, sir.

The Special Master: But if you had a report from one of those agencies showing that they had held out some money and told you, "This isn't bribery and trust me," would that satisfy you?

A. Well, that is a little different relationship.

The Special Master: Maybe it is, but, first, would you do that?

A. We would tell them in a case of that kind they owe us so much for premiums written and the rest, any other matters wouldn't concern us and that was their responsibility. We are not concerned in any obligations they might have, but only concerned in their obligation to us.

The Special Master: What if they would assure you it was their obligation but to still trust them it wasn't bribery? A. That still wouldn't justify the non-payment of a premium.

Q.206. (By Judge Henson) But in this one single instance you did take Street's assurance where you wouldn't have taken any other employee's in your whole companies? A. No, I wouldn't say that. This man was in charge of this litigation. We trusted him. The man had been in the business a good many years and always had a good record, there is no reason why we shouldn't have trusted him. It is his responsibility and was a tremendous task, that Missouri litigation was, really.

Q.207. You regarded him as being honest and all right? A. That is right.

Q.208. Why did you think he had to recommend himself that there was no bribery in this? Why would a man of his character have to put that in a letter? A. That is his own statement. I can't answer what he had in mind, unless he just wanted to emphasize his assurance that everything was all right.

Judge Henson: That is all.

Cross Examination by General Bullitt.

XQ.209. The Master asked you if the amount of the expenses of this litigation wouldn't have some effect on the amount of your assets. You remember that question? A. That is right, yes, sir.

XQ.210. Do you not still have an interest in certain funds in the hands of the trustees? A. That item is still carried on our books.

XQ.211. Do you know the amount of what your interest is? A. Offhand I can't say.

XQ.212. Do the books show the amount? A. The books show the amount.

XQ.213. Where do you get your information of what interest you have? A. We have to deposit with the Referee a certain percentage of every premium written, with the custodians, and those statements are all on file with the custodian and when that deposit was made, that went on our books as an outstanding balance.

XQ.214. You misunderstood my question. A. Maybe I didn't answer yours. I switched off to the Referee's.

XQ.215. I didn't ask you about your interest in what the custodian had. I asked you if you didn't have an interest in the funds that were still in the hands of Henne and Folonie as trustees. A. We did, yes.

XQ.216. You don't carry that on your books, do you? A. It is carried on our books as it would be represented in that outstanding balance, whatever it is.

XQ.217. But you don't know the amount that you are ultimately going to get back out of that? A. We haven't had any accounting yet.

XQ.218. I know you don't carry that as an asset? A. No, not as an asset. It is a non-admitted asset.

XQ.219. Even as an non-admitted asset, you don't carry on your books the undetermined amount in the hands of the trustees, do you? A. Everything that has not been accounted to us for is in this account of the Missouri impounded premiums.

XQ.220. All right. In order to carry on your non-admitted assets, your interest in the 30 per cent fund in the hands of the trustees, wouldn't you have to know the amount of the expenses that had to be paid out of that 30 per cent? A. Mr. Bullitt, that would finally come in the final accounting.

XQ.221. Well, I say, isn't it a fact that your books do not show even under the head of non-admitted assets the amount of your interest in the funds in the hands of the trustees? A. Well, it is all shown.

The Special Master: He is right about that. Let me ask it another way.

General Bullitt: Yes, indeed.

A. Maybe I don't understand.

The Special Master: You set up all of the premiums that you claim you are entitled to that are in the hands of the trustee as a non-admitted asset?

A. That is right.

The Special Master: Whenever it gets free from whatever has been taken out of it, then so that you can absolutely claim it, why, then it will be an admitted asset. Whatever is left will be an admitted asset.

A. That is right.

General Bullitt: That is it. He can't just tell the asset.

The Special Master: I know what a non-admitted asset is.

XQ.222. (By General Bullitt) By the way, did you have any means of knowing what were or would be the amount of the expenses of this Missouri litigation before it would be finally wound up? A. Nothing at all.

XQ.223. At the time that Mr. Street asked you for this additional, or paid you the 5 per cent and asked you to send it back, was the restitution case still open and undecided? A. Just what do you mean by that, Mr. Bullitt?

Mr. Berger: That is the old *Aetna* v. *Hyde* where you had to pay back to the state court the undistributed portions to the policyholders.

A. On the first case we made the refunds ourselves and there was a certain small percentage of individuals through death or removal or something we could not find.

XQ.224. (By Mr. Bullitt) I say, that restitution case was still open? A. Well, I can't remember as to the date, but eventually we paid that money into court, that difference.

XQ.225. But in 1936 wasn't that restitution case still unsettled and not disposed of or do you remember about that? A. I can't remember the dates.

XQ.226. At that time was the state case still undisposed of on appeal? A. Yes, the state case was just disposed of recently.

XQ.227. There were expenses in that case, too, weren't there? A. Yes.

XQ.228. Then the Missouri litigation was still open, was it not, and undisposed of? A. Yes, we considered it as open and undisposed of.

XQ.229. In Exhibit D-38, Mr. Street's letter to Mr. McKown, dated March 30, 1936, Street says, "Full report will be made at the April meeting." Do you know what that April meeting is that he refers to? A. The April meeting of the Western Underwriters' Association.

XQ.230. That is what he is referring to? A. Yes.

General Bullitt: That is all.

The Special Master: Just let me get straight. There is evidence here, first, that a contract of settlement was made by Mr. Street with certain state authorities. Was a copy of that contract furnished to your company?

A. It was not.

The Special Master: There is also evidence that later on that was approved by the federal court, a decree was rendered, I should say, pursuant to that settlement. Was a copy of that decree furnished to your company?

A. I imagine we have a copy of that decree in the files, although I couldn't say.

The Special Master: Then there is evidence that Mr. Street and Mr. Folonie executed a declaration of trust making themselves trustees on account of the way 30 per cent of the fund was to be handled. Was a copy of that ever furnished to you?

A. I can't say whether we have a copy of that trust agreement or not, but we were at least advised at sometime, formally advised, that they were trustees for the distribution.

The Special Master: Then there is evidence that the trustees made a report to the court. When was that report made?

Judge Henson: Just this year, February this year.

Mr. Berger: February 25, 1939.

A. Is your question whether we had a copy of that report?

The Special Master: Yes, did you get a copy of that?

A. Well, I have seen it; now, whether I saw the original or a copy thereof or a newspaper article on it, I can't say.

The Special Master: But it was contemplated by the declaration of trust, unless the Court asked them to make it, they wouldn't report to the Court. Did Folonie and Street as trustees make any report to the companies?

A. We haven't had any final report.

The Special Master: Did you get any reports at all?

A. We had these letters from Street enclosing the original 50 per cent payment.

The Special Master: I know he just told you that, but did the trustees ever make any annual, semiannual or other reports telling what they had done as trustees, what money they had received and what they had done with it?

A. No periodical reports. I don't recall having seen any, at least.

The Special Master: All right.

Judge Henson: None of your companies were in the state court litigation?

A. No.

Judge Henson: I guess that is all.

(Witness excused.)

J. C. McKOWN, recalled as a witness on behalf of the defendants, having been previously duly sworn, testified further as follows:

Direct Examination (continued) by Senator Hollingsworth.

Q.36. Mr. McKown, I show you Defendants' Exhibit 38, a letter addressed to you by Mr. Street, dated March 30, 1936. That letter, by reason of being addressed to you, came to your desk, did it not? A. I couldn't say. I don't recall ever seeing that letter until I looked at it the other day after Mr. Hobbs explained to me why I was called down here, having nothing to do with Missouri. Well, he says it is on account of that letter which Mr. Street addressed to me of March 30, 1936. I said, "What is that letter?" "Well," he says, "we have a copy of it here." I said, "I don't know anything about it."

Q.37. I notice in there he makes this statement—

The Special Master: Has that been introduced in evidence?

Senator Hollingsworth: Yes, it has been.

The Special Master: May I see it? I don't think I paid any attention to it because you excused the witness and I didn't care anything about it.

Mr. Berger: That is the same letter they used with Mr. Dosdall.

Senator Hollingsworth: He has been examined from it.

The Special Master: Oh, yes, you asked the other man about this letter.

Q.38. (By Senator Hollingsworth) I notice in this letter this statement, "The situation has changed since I spoke to you." When had he spoken to you before March 30, 1936? A. I haven't any recollection of any conversation with Mr. Street about this situation. I have been down here to Chicago at different times.

Q.39. Well, the situation existed there to which he referred. Were you familiar with the situation? A. No.

Q.40. Which he said was changed? A. No.

Q.41. Now, at that time, March 30, 1936, the settlement had been made, hadn't it?

Mr. Berger: Oh, yes, the final decree had been entered.

Q.42. (By Senator Hollingsworth) And the final decree had entered. You recall that, don't you? A. No.

Q.43. You don't recall anything about it? A. No, sir.

Q.44. You don't recall Mr. Street having spoken to you about the matter? A. No, sir, I do not.

Q.45. And where he told you here further, "Have been to New York where a number of the 'big boys' met," does that refresh your recollection as to the situation which I mentioned in this letter? A. No, sir.

Q.46. And that he came back with a Home check for $34,000.00. They had previously put up $15,000.00. Does that refresh your recollection about this matter? A. No, sir.

Q.47. Do you say now that Mr. Street was in error in saying that he had ever spoken to you about the matter? A. I wouldn't say that.

Q.48. Do you think that possibly he did speak to you about it? A. He might have made some casual remark to me, but nothing that I had anything to do with the Missouri situation. It made no impression on me at all.

The Special Master: Isn't it possible that Mr. Street might have gotten mixed up as to which one of these men had charge of the western department?

Senator Hollingsworth: That is possible. I was just trying to get at whether or not you have any recollection of that situation at all.

A. I can answer that question. I think that is the whole solution of that letter. I think Mr. Street, knowing that we were both secretaries and seeing me, probably more often than he did Mr. Dosdall, addressed this letter to me. Now, if this letter came to my desk, which I do not remember, it was immediately turned over to Mr. Dosdall's desk, whose office is right next to mine, and I dismissed it from my memory.

Q.49. I see a memorandum in lead pencil, "Legal expense, Missouri impoundings." A. I would say that is in Mr. Dosdall's handwriting.

Q.50. That is not your handwriting? A. No, sir. Furthermore, Mr. Dosdall's stamp of receipt of the letter is on that and mine is not.

Mr. Berger: That is Mr. Dosdall's handwriting.

Senator Hollingsworth: I think that is all.

(Witness excused.)

The Special Master: I think I understand what happened. Mr. Street would naturally come in contact with the man in charge of the eastern business oftener than he would the other man. He knew him and recognized him and knew he was secretary and he just probably depended on his memory and addressed that to him and it was immediately transferred to the office of the desk of the proper man.

RAYMOND WALDRON, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Please state your name. A. Raymond Waldron.

Q.2. Where do you live, Mr. Waldron? A. Detroit, Michigan.

Q.3. What is your official connection with the Great American Insurance Company group? A. I am vice-president of the Detroit Fire and Marine Insurance Company.

Q.4. And were you vice-president in the year 1935? A. I was.

Q.5. Did you as vice-president have charge of the participation of your company in the affairs of the settlement of the Missouri fire rate litigation? A. The Missouri fire rate litigation, so far as our activities were concerned, was under my jurisdiction.

The Special Master: I want to know more about just what your connections are. Did you hold a similar position with any other company besides the one you have just mentioned?

A. No, sir.

The Special Master: Not in any group?

A. No, not in any group. The Detroit Fire and Marine is a part of the Great American group. I am not an officer of the Great American.

The Special Master: Just that one company?

A. Just that one company.

Mr. Berger: By reinsurance agreement.

The Special Master: I know. I want to keep these straight as we go along. There are different ways of having the groups, and I want to know what the situation

is. In other words, your group handled it by reinsurance and not by common management, is that the idea?

A. The Detroit Fire and Marine in the central west, they operate just as though they were an independent company. In other words, we are a friendly competitor of the Great American. We compete with the Great American just as freely as we do with any other company you might name. The Great American holds the majority of our stock. That is their interest in it.

The Special Master: But there is no common management?

A. No common management in the central west. There is in the east and Pacific Coast.

The Special Master: We don't need to worry about that. All right, go ahead.

(Check, handed to the reporter, was marked for identification as "Defendants' Exhibit 43, EFM.")

Q.6. (By Senator Hollingsworth) Mr. Waldron, I show you Defendants' Exhibit 43, which is a check of Detroit Fire and Marine dated March 9, 1936, payable to Charles R. Street as agent. A. Correct.

Q.7. And what caused you to issue that check? A. We issued that check at Mr. Street's request.

Q.8. What kind of a request did you get from Mr. Street? A. I can't recall right now. It was either a letter or a memorandum. I can't locate it. As a matter of fact, I paid very little attention to this Missouri litigation.

Q.9. But you did get a letter or memorandum from Mr. Street? A. We certainly did.

Q.10. And that is Charles R. Street? A. Charles R. Street.

Q.11. I understood you to say a moment ago that the Great American is not a parent company of your company? A. Oh, it is; the Great American owns most of the stock.

Q.12. Oh, I see.

The Special Master: It isn't common management. In Missouri and the central west it is not common management.

Q.13. (By Senator Hollingsworth) Do you remember the contents of that memorandum? A. No, I don't.

Q.14. What information did you get as to what it was for? A. Got no information whatsoever.

Q.15. You had no information as to what the expense item was for? A. No, I did not.

Q.16. At the time you issued that check you didn't know what expense that was chargeable to? A. Most emphatically no.

Q.17. Had no idea or information? A. No.

Q.18. Did you make an entry on your books? A. Yes, we had to do that, of course.

Q.19. All right, what entry did you make on your books? A. There must be a check requisition here.

The Special Master: That check is not in evidence.

Senator Hollingsworth: I now offer it in evidence.

(Which said Defendants' Exhibit 43, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

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Detroit FIRE & MARINE INSURANCE Co.

NO. 8764

DETROIT, MICHIGAN. MAR 19 1936

NATIONAL BANK OF DETROIT 9-32

Pay to the order of

C P Streets Agency $897.43

XX$897.43 DTS

SPECIAL ACCOUNT

R H Alexander

Chas A Decker

D 4/3

C P Streets Agency

P 11 M. MAR 21 1936 DET

Q.20. What entry did you make on your books? A. Here it is (indicating), in payment of 5 per cent of the total Missouri impounded premiums, Missouri impounded premiums, $312.00, Detroit Fire and Marine Transfer Account, $587.00. That was charged to expense in connection with the litigation.

Q.21. But the nature of the expense, you had no information whatever? A. None except that I recall communication may have been two or three months or it may have been six months or a year before about expenses in connection with this litigation, and enumerated a half dozen things, and I presumed that it was in connection with that.

Q.22. At that time you were familiar with the fact that a settlement had been made of this insurance litigation, weren't you? A. Well, I am not sure of that. As a matter of fact, I didn't pay much attention to this Missouri litigation. It was a nightmare to us. We had practically ceased doing business in Missouri in the year 1932. We didn't have a large amount involved and we had lost all interest in it, and whenever we tried to follow the intricacies of the case, it was like being lost in a mystic maze and we didn't consider that the amount we had involved was worth the time and effort to try to untangle it.

Q.23. But at the time you issued this check in March of 1936, will you say that you knew that the settlement had been made and that a final decree had been entered? A. The first I knew that a settlement had been made was what I read in the insurance journals.

Q.24. Well, that came out shortly after the settlement was made, didn't it? A. I don't know. I would have to go back and look over some of these newspapers.

Q.25. Did you know that 30 per cent had been allocated for the purpose of payment of expenses in that settlement? A. No, I did not.

Q.26. You didn't know that? A. Didn't know and didn't care.

Q.27. You were not interested in the extent of trying to find out? A. No, sir.

Q.28. How much money you had coming? A. No, sir.

Q.29. And you were not interested enough to pay any attention to the fact that 5 per cent of the total impounded premiums would amount to $450,000? A. No; I depended upon our auditor to figure that out, and when he made out the check requisition and presented

it and I considered that our total impoundings were only about $17,000.00 or $18,000.00, something like that, roughly figured, and this check was so small, and having implicit confidence in Mr. Street, knowing that he had carried on this litigation since, well, fifteen or sixteen years, we concluded that there was nothing for us to do but send him the check.

Q.30. And you sent it? A. I sent it.

The Special Master: How much was that check?

Mr. Bullitt: $897.43.

A. Mind you, we had retired from Missouri, that is, actively, in 1932. We quit the state or retired from the State of Missouri in the spring of 1935, officially, although we did have very small writings.

The Special Master: It wasn't much of a check?

A. No.

Q.31. (By Senator Hollingsworth) I would like to ask you one question: What are the companies comprising the Great American Insurance Company group?

The Special Master: What were they in 1935 and 1936?

Senator Hollingsworth: That is right.

A. The Great American, the American Alliance, the Massachusetts, the Rochester American, the Detroit Fire and Marine, the County Fire of Philadelphia, the American National of Columbus, and the Great American Indemnity of New York.

Q.32. (By Senator Hollingsworth) Let me ask you, to get the record straight, if these were the companies that were doing business in Missouri at that time, the American Alliance, the County Fire, Detroit Fire and Marine, the Great American, the Massachusetts Fire and Marine? A. Yes, sir.

Q.33. The others were not doing business in Missouri at that time, not involved in this litigation? A. Not as far as I know. All I know is about the Detroit.

Q.34. And your sole connection was with the Detroit Fire and Marine? A. Yes, sir.

Q.35. What was Charles R. Street's connection? A. He was a vice-president of the Detroit.

Q.36. Of all of the companies? A. Yes.

Q.37. And president of the Great American Company? A. President—no, vice-president of the Great American.

Q.38. Who was president? A. W. H. Koop of New York City.

Senator Hollingsworth: I think that is all.
Mr. Bullitt: No questions.
(Witness excused.)

CHARLES A. REEKIE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Please state your name. A. Charles A. Reekie.

Q.2. What is your connection with the Detroit Fire and Marine Insurance Company? A. Vice-president and secretary.

Q.3. What was your position with that company in the years 1935 and 1936? A. They were the same.

Q.4. I show you Defendants' Exhibit 43, Mr. Reekie, and ask you to state whether or not you countersigned that check. A. I did.

Q.5. What was the occasion of your countersigning it and what information did you have in regard to it? A. Why, Mr. Waldron is the executive officer of the company. I am not very active now, and he said it was all right and I signed it.

Q.6. He said it was all right? A. Or something like that.

Q.7. Was there any conversation or I mean any discussion between you about the check? A. Why, he told me what it was for.

Q.8. And what did he tell you it was for? A. He said it was something that Mr. Street had asked for, to send over 5 per cent. That is all he knew about it and all I knew about it.

Q.9. Was there any discussion as to what it might be for? A. None except it might be for expenses, and we would have an accounting later.

Q.10. Who told you that you would have an accounting later? A. I believe we got that from the Western Underwriters' Association, as far as I can remember.

Q.11. Do you have a file of correspondence on this? A. No, sir.

Q.12. Are there any files in your office in regard to this check? A. Not that I know of. I am not very active there now.

Q.13. Do you recall any discussion or any letters that were sent to you in regard to the check? A. No, sir.

The Special Master: You say you are not active now. Were you inactive then? A. No, I retired in '33, but my duties were light and I had no responsibility.

Q.14. (By Senator Hollingsworth) You have no knowledge whatever other than what you have stated? A. That is all.

Senator Hollingsworth: That is all.

(Witness excused.)

The Special Master: We will adjourn until one o'clock.

Whereupon, the further taking of testimony in said case was adjourned until one o'clock p. m. of said Friday, July 28, 1939.

AFTERNOON SESSION, FRIDAY, JULY 28, 1939.

Pursuant to adjournment as aforesaid, at one o'clock p. m. of said Friday, July 28, 1939, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

S. F. WEISER, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Mr. Weiser, what is your residence? A. Dubuque, Iowa.

Q.2. What is your connection with the Dubuque Fire & Marine Insurance Company group? A. Secretary.

Q.3. What other companies are affiliated with the Dubuque Fire & Marine? A. National Reserve Insurance Company.

Q.4. And was that the situation in 1935? A. Yes, sir.

The Special Master: Is that the same company we were talking about a while ago?

Senator Hollingsworth: No, sir.

Q.5. And were you secretary of both the Dubuque and the National Reserve in 1935? A. I was.

Q.6. Is the Dubuque the controlling company? A. No, they are two distinct companies under the same management.

Q.7. Did you have any New York connections at all? A. In what way? What do you mean?

Q.8. Do you have an office there, a manager? A. No, we have agents. Our home office is in Dubuque. We have no other.

Q.9. Who is Mr. H. A. Clark? A. Mr. H. A. Clark is the vice-president and manager of the Western Department of the Royalty group, the Firemen's group.

Q.10. Is there any connection between the Firemen's fleet and the Dubuque and National Reserve? A. Outside of we both belong to the same organization known as the Western Insurance Bureau.

Q.11. Western Insurance Bureau? A. Western Insurance Bureau.

Q.12. Is that simply a voluntary trade association? A. That is a combination of certain companies.

Q.13. You know Mr. Charles R. Street, of course? A. Yes. I have known Mr. Street for quite a number of years.

Q.14. Mr. Weiser, were you familiar with the settlement of the insurance litigation, the Missouri litigation that was made in May of 1935? A. Only through the advices that we received from the committee or Mr. Clark who was on that committee and who represented the bureau companies.

Q.15. What was the nature of that settlement? What did it provide in chief, in substance? A. Why, I couldn't tell you.

Q.16. Well, of course, you knew that generally it was on an 80 and 20 basis, 20 per cent to the policyholders and 80 per cent to the companies? A. Something of that sort. I wouldn't want to quote the figures. In fact, I wouldn't want to say that I was positive on that score.

Q.17. You know that out of the 80 per cent, 30 was allocated for the payment of expenses of the litigation of the attorneys on both sides, did you or not? A. Yes, I believe I did.

Q.18. That was your understanding? A. My understanding.

Q.19. At about the time that that settlement was made, did you know anything about $100,000.00, to be exact, I think $100,500.00 being raised among some fourteen companies? A. No, sir.

Q.20. For the purpose of paying Hicks and Folonie? A. No, sir.

Q.21. Do you know anything about that now? A. No, sir.

Q.22. Have you heard that that was done and learned that fact? A. Just from you at this time. That is the first time I ever heard of it.

Q.23. You never even knew to this date until I mentioned it that some $100,000.00 was advanced by fourteen companies to Hicks and Folonie? A. No, sir, I did not. I never heard of it.

Mr. Berger: Of course, that statement is not quite correct.

The Special Master: Well, it is not testimony. He asked if he heard any such a thing, and his answer is "no."

A. No.

Mr. Berger: That the $100,000.00 was advanced to Hicks and Folonie. That is not a fact.

Senator Hollingsworth: Well, the checks were written to Hicks and Folonie.

Mr. Berger: No, they all were not.

A. I never heard of any payments or any sums being raised payable to them.

The Special Master: There will be time enough to straighten out the details of such a transaction when you get a witness who purports to know anything about it.

Q.24. (By Senator Hollingsworth) In any event, your company didn't participate in any payment of that character? A. No, sir.

Q.25. Now, this litigation was in charge, I believe, of the Actuarial Committee? A. Yes.

Q.26. After that settlement was made, did your companies receive from the custodian substantially 50 per cent of the impounded premiums due your companies? A. I would prefer to have our Mr. Reilly answer that, because I don't believe I am in a position to say, and he is here, and he can answer that as to the amount we received.

Q.27. But you did receive from the custodian certain funds? A. That is my understanding.

Q.28. And then do you recall that in March of 1936, you received from Folonie and Street, Trustees, eleven percent of the impounded premiums? A. Yes. I received it in this way, I will explain that; I had a phone call from Mr. Clark. I had a phone call from Mr. Clark and he said they were sending us some money which, I think, amounted to sixty-four hundred and some hundred dollars with the Dubuque, and about $1,600.00 with the National Reserve. I received a letter from him the next morning, advising that he was forwarding the money

and confirming our phone talk of that date, and he asked us to remit 5 per cent of that amount.

The Special Master: Mr. Clark?

A. H. A. Clark. We had all our dealings with Mr. H. A. Clark, who was the Western Insurance Bureau member of that committee. I never had any conversation or talks with Mr. Street.

Q.29. Now, Mr. Clark, a member of the Actuarial Committee was also on what other committee? A. I think he was on the committee that was handling the Missouri impounded premium case.

Q.30. Was there any particular reason why Mr. Clark would communicate with your group of insurance companies? Did he have any special connection with your group? A. No, outside of the fact that he was a bureau member that was on that board or on that committee.

Q.31. At the time that Mr. Clark telephoned, you give as fully as you can the conversation that he had with you? A. Well, I have already advised that he said they were going to send some money and that he would ask us to remit a check for 5 per cent, and when that came in the next day, in his letter he stated we were to draw that on account of attorneys' fees and expenses.

Q.32. What was the purpose? Why did he telephone you and have any conversation with you and then write you confirming the telephone conversation? A. I couldn't explain that.

Q.33. Was there anything urgent about getting the checks out? A. Not to my knowledge, sir.

Q.34. And he did write you the same day, did he not? A. Yes, sir.

Q.35. That he telephoned? A. Yes, sir.

Q.36. Do you have any explanation as to why he held this telephone conversation with you and then wrote you immediately confirming that? A. No, sir.

Q.37. He had no reason; he simply told you that they were sending you 11 per cent, and that he would want 5 per cent back? A. Yes.

Q.38. For expenses? A. That is right.

Q.39. He didn't tell you to rush the check to him or anything else? A. No, sir.

Q.40. Did he tell you that he would write you? A. No, sir.

Q.41. But you didn't act on that request that day? A. I acted on that request the next day when the letter came in.

Q.42. Well, did you know that a letter was coming? A. No.

Q.43. Why did you wait until the letter came? A. I had made a memoranda and took it out and handed it to my assistant, Mr. Reilly.

Q.44. Immediately upon receipt of the telephone call? A. Yes, and the letter of Mr. Clark's apparently came in there before Mr. Reilly had taken action.

Q.45. Do you have the memorandum that you gave to Mr. Reilly in your files? A. Yes.

Q.46. Would you produce it? A. Certainly.

Mr. Bullett: The original is with Mr. Milligan and you have—

Mr. Berger (Interrupting): That is in Dubuque.

A. I have the original.

Mr. Berger: Do you have it here?

A. Yes.

Mr. Berger: Just get it (Witness complies).

(Said memorandum, handed to the reporter, was marked for identification as "Defendants' Exhibit 44, EFM.")

Q.47. (By Senator Hollingsworth) I hand you Defendants' Exhibit 44, and ask you to state if that is the memorandum that you made at that time? A. That is right.

Senator Hollingsworth: I now offer in evidence Defendants' Exhibit 44.

(Which said Defendants' Exhibit 44, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 44.

"30% Item
Send chk 6400.00
Return check
for each - 5%
Impounded premiums
as of 5/1/35
Check drawn to
C. R. Street - Agent
a/c Attys Fees & Expense
Due NR - 3585.86

H. A. Clark - 844 Rush St. Chgo."

Q.48. I notice up at the top here it says "30 per cent Item." Was that notation made pursuant to a part of your telephone conversation with Mr. Clark? A. I imagine it was. I couldn't say.

Q.49. What did the 30 per cent item refer to? A. I don't remember what that was now.

Q.50. Well, don't you know, Mr. Weiser, that that referred to the 30 per cent that had been allocated for the payment of expenses, and that he told you—

Mr. Berger (Interrupting): What follows that?

Senator Hollingsworth: "Send check $6,400.00."

Mr. Berger: That is 11 per cent.

A. I say that is what they sent us, $6,400.00, and I imagine that is what Mr. Clark said would be sent.

Q.51. Would be sent, $6,400.00? A. Yes.

Q.52. He told you that that 11 per cent was out of the 30 per cent, part of the trust fund, did he not? A. I don't remember.

Q.53. The words "30 per cent item" doesn't refresh your recollection about it? A. No, it doesn't.

Q.54. Then I note these words, "Return check for each." I presume that means each company? A. Dubuque and the National Reserve

Q.55. "Five per cent impounded premiums as of 5-1-35." A. That was the impounded premiums; that was the amount of premiums impounded to our credit or supposedly the credit of our two companies on May 1, 1935.

Q.56. Then the next words, "Check drawn to C. R. Street, Agent, account attorneys' fees and expenses." Now, you obtained that from Mr. Clark? A. Clark.

Q.57. Did Mr. Clark make any statement to you as to why he was sending you 11 per cent and calling you over the telephone and asking you to return 5 per cent payable to C. R. Street, Agent? A. Not that I remember.

Q.58. Now, this 11 per cent check was signed by Street and Folonie as trustees, was it not? A. That I don't know. I think that check was turned over to our chief accountant who deposited it. I never saw that check.

Q.59. You say that you don't remember his telling you anything about what he wanted these funds for, except I see you have this item, "Account attorneys' fees and expenses." A. He must have told me that.

Q.60. Didn't it strike you as strange that the 5 per cent for attorneys' fees and expense was not held out by the trustees under the trust agreement? A. No, it didn't occur to me to question it at all.

Q.61. That never entered your mind? A. No, sir.

Q.62. You never thought to make any inquiry about it? A. No, sir.

Q.63. Did you ask or undertake to find out to whom Mr. Street was going to pay the attorneys' fees? A. I did not.

Q.64. You did understand that your portion was 5 per cent of the impounded premiums? A. Yes, sir.

Q.65. Of course, you understood that all of the other companies were bearing a like portion? A. I didn't know anything about the other companies. I know they told us it was 5 per cent and I followed his instructions.

(A photostatic copy of a letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 45, EFM.")

Q.66. Now, I hand you Defendants' Exhibit 45, and ask you to state if that is the copy of the letter. A. That is.

Q.67. Defendants' Exhibit 45 is the photostatic copy of the letter you received from Mr. Clark the following day? A. That is.

Senator Hollingsworth: I offer in evidence Defendants' Exhibit 45.

(Which said Defendants' Exhibit 45, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Dear Sol:

This will confirm my telephone conversation with you today.

Enclosed is check payable to the Dubuque for $6,400.91 and check payable to the National Reserve for $1,487.54. This is a payment out of the 50 per cent of the amount of the Missouri impounded premium fund that is being held by Trustees R.J.Folonie and C.R.Street.

After receipt of these checks will you please send me a check for each of your companies for 5 per cent of the amount of your impounded premiums as of May 1, 1955? These checks should be made payable to C.R.Street, Agent, and are payment on account of attorney's fees and expenses in connection with this litigation.

According to the records 5 per cent of the amount of the impounded premiums for both of your companies would be $3,585.86. However, if this does not correspond with your records send your checks for 5 per cent of the amount of the impounded premiums as of May 1, 1955 according to your own records.

H.A.C.

5/24/56

Mr. Bullitt: Are you going to read it to the Master?

Senator Hollingsworth: Yes, I will read it.

Mr. Bullitt: You say you are or not?

Senator Hollingsworth: Yes, I will read it. This letter reads, "Dear Sol:"—Well, if the Master has it there, I won't take time to read it. "This will confirm my telephone conversation with you today."

Q.67½. That was the telephone conversation concerning which you have just testified? A. Yes.

Q.68. (Reading) "Enclosed is check payable to the Dubuque for $6,400.91 and check payable to the National Reserve for $1,487.34. This is a payment out of the 30 per cent of the amount of the Missouri impounded premium fund that is being held by Trustees R. J. Folonie and C. R. Street." Now, you knew to what he referred there, do you not, the 30 per cent fund? A. He explained it there, yes. I knew it then.

Q.69. You knew for what purpose that fund was being held? A. I didn't quite understand.

Q.70. You know for what purpose the 30 per cent fund was being held by the trustees? A. No, I don't.

Q.71. Well, did it mean anything to you when he said, "This is a payment out of the 30 per cent of the amount of the Missouri impounded premium fund that is being held by Trustees Folonie and Street"? A. Outside of the fact that we received one of $6,500.00 and one of $1,400.00, it didn't affect me very much.

Q.72. It didn't mean anything to you? A. No.

Q.73. You didn't know what the 30 per cent was allocated for? A. I didn't bother my head about it.

Q.74. Well, when the settlement was made, did you bother your head to find out what was done with some $71,000.00 worth of impounded premiums? A. No, I didn't.

Q.75. That belonged to your company? A. I didn't think it was settled as yet.

Q.76. Sir? A. I didn't consider—I didn't know it was settled. You mean settled?

Q.77. I mean compromised and settled. A. I didn't take it that way.

Q.78. Your companies then had $71,711.00 impounded premiums as of May 1, 1935? A. Yes.

Q.79. You knew that some kind of compromise had been effected? A. Yes, sir, and I felt we would get our just dues in due course.

Q.80. You never undertook to find out? A. No, sir.

Q.81. What portion of that money was to be returned to your company? A. No, sir, I did not.

Q.82. You didn't know whether it was 10 per cent or 90 per cent or 50 per cent? A. No.

Q.83. You hadn't bothered your head about it one way or another? A. No.

Q.84. You are secretary of these companies? A. Yes, sir.

Q.85. Are you in active management of the companies? A. I think so.

Q.86. Sir? A. Yes, sir.

Q.87. Did you set up any account on your books or cause an account to be set up in regard to these impounded premiums? A. Yes, sir.

Q.88. Did your books show you the extent of your impounded premiums in Missouri? A. Yes, sir.

Q.89. Now, after the compromise was made, were there any entries made on your books in regard to that compromise as to the basis of it? A. No. I believe we carried it as an asset and we also charged the same amount in our liabilities against it as a contra charge.

Q.90. As a contra charge? A. Yes, sir. That was, I believe, according to the recommendation of the Missouri Insurance Department, so I am told, prior to Mr. O'Malley's rule.

Q.91. Who was Mr. O'Malley? A. I understand he was an insurance commissioner of Missouri.

Mr. Berger: He said prior to Mr. O'Malley?

A. Yes, prior. I get that information from our accountant.

(Photostatic copies of checks, handed to the reporter, were marked for identification as "Defendants' Exhibits 46 and 47, EFM.")

Q.92. I hand you Defendants' Exhibit 46 and Defendants' Exhibit 47, and ask you to state if those are photostatic copies of the checks which you caused to be issued? A. Yes, sir, they are.

Q.93. I note that they bear date of March 25, 1936. A. Yes.

Senator Hollingsworth: I offer these in evidence as Defendants' Exhibits 46 and 47.

(Which said Defendants' Exhibits 46 and 47, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

DUPLICATE DRAFT MUTUAL INSURANCE CO.

No 58408

$2910.

MAR 25 1936

Pay to the order of Loyal Protective Insurance Co.

Two thousand nine hundred ten and no/100 Dollars

RESERVE for Loan and Objects

Dept. of Attorney, Fund, Expense

To THE NORTHERN TRUST COMPANY
2-15 CHICAGO, ILL.

W. R. Reilly

Assistant Secretary

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

MAR 28 1936

PAID

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

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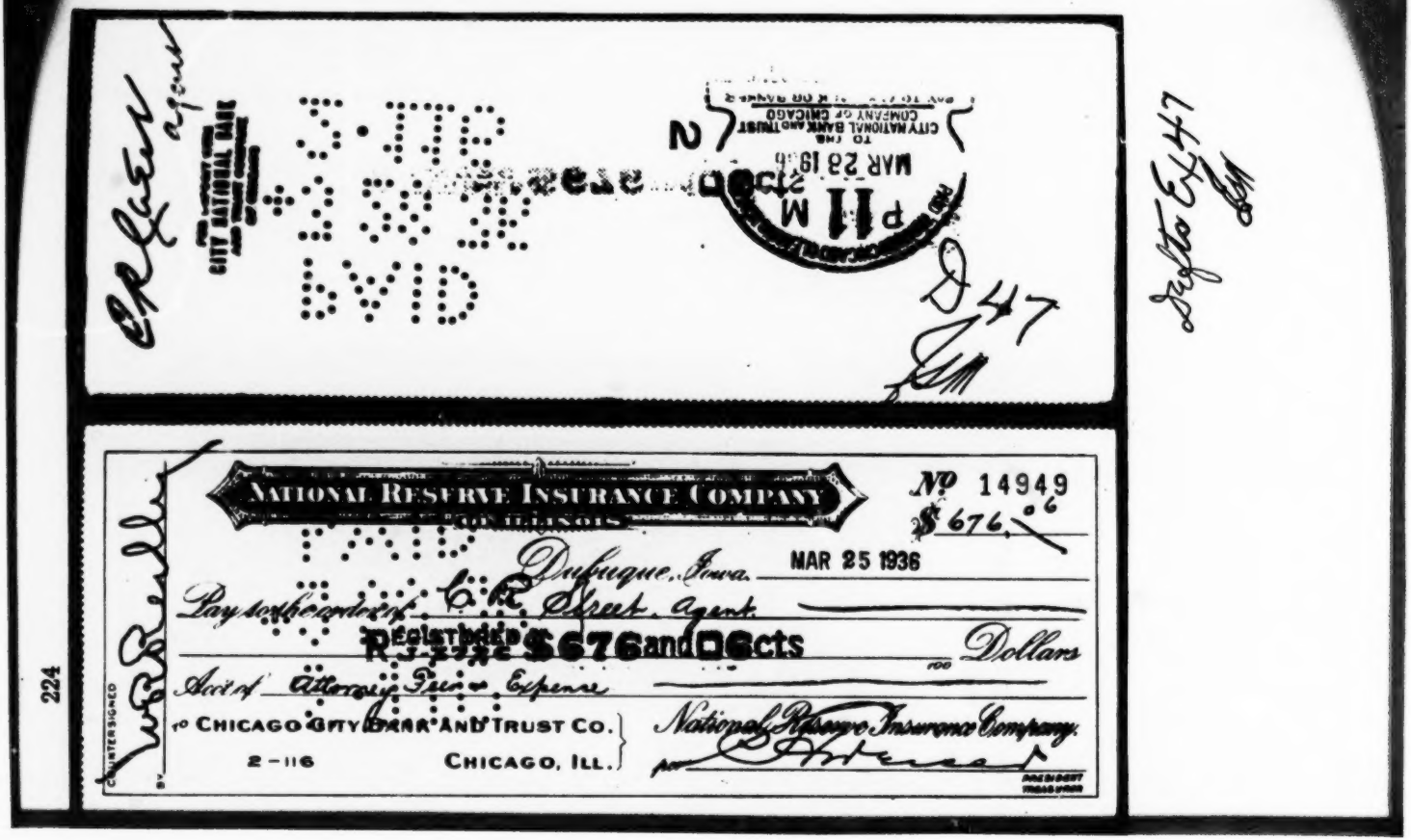

NATIONAL RESERVE INSURANCE COMPANY
OF ILLINOIS

No 14949
$676.00

Dubuque, Iowa. MAR 25 1936

Pay to the order of C. R. Street, Agent

Six Hundred Seventy-six and 00 cts Dollars

Acct of Attorney's Fees & Expense

To CHICAGO CITY BANK AND TRUST CO.
2-116 CHICAGO, ILL.

National Reserve Insurance Company.

COUNTERSIGNED

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Q.94. Now, those were made payable to C. R. Street, Agent? A. Yes, sir.

Q.95. And whose agent was he, or did you intend him to be at the time you wrote those checks? A. Well, I imagine he was the agent in charge of the companies' interests in connection with the committee that was handling the argument or the litigation on the impounded premiums.

Q.96. In other words, you wrote him those checks as your agent for distribution in accordance with Mr. Clark's conversation with him in his letter? A. Mr. Clark's instructions to us, yes.

Q.97. To pay whatever attorneys' fees and expenses —attorneys' fees, I believe, and expenses that Mr. Clark had mentioned to you? A. Yes, sir.

Q.98. At that time had your company paid any other attorneys' fees in connection with this rate litigation? A. I couldn't say whether we had paid any previous attorneys' fees or not.

Q.99. Did you know who your attorneys were? A. We always understood Hicks and Folonie were.

Q.100. Had you paid them any fees? A. I can't remember that.

The Special Master: They received their money from the Missouri Inspection Bureau, didn't they? As I understand the attorneys received their fees theretofore from the Missouri Inspection Bureau, and the Missouri Inspection Bureau made their assessment for all expenses big enough to include that, among other things, including the rating activities. Isn't that your understanding?

Judge Henson: In this case that would be through Mr. Terry.

The Special Master: Paul Terry of St. Louis, yes.

Judge Henson: I expect that is right.

Mr. Berger: Of course, after the trustees came in possession of the funds, some of the attorneys' fees were paid out of that.

The Special Master: I know. He was asking about fees that were paid before. You will not find that they directly paid any fees before then.

A. I don't remember about any.

The Special Master: Well, you did not.

Senator Hollingsworth: I think that is all.

Cross Examination by General Bullitt.

XQ.101. Just a minute. I want to ask you a question or two. Prior to 1935, did you or did any officer of your company, so far as you know, ever write, telegraph or telephone or personally speak to Mr. Street, telling him to act for you in this sixteen and two-thirds percent litigation? A. No, sir, not a soul connected with our company, because I would be the one that would do it.

XQ.102. Now, did you, or anybody else in your company as far as you know, ever by telephone, by telegraph or by letter or by personal conversation ever tell the Subscribers' Actuarial Bureau or any member of it to bring a suit for you about this Missouri sixteen and two-thirds percent rate or to do anything in connection with it? A. No, sir.

General Bullitt: That is all I want to ask him.

Re-Direct Examination by Senator Hollingsworth.

RDQ.103. Well, you learned that a suit was brought for your company, didn't you? A. Well, I imagine we would hear that, yes.

RDQ.104. Well, you did hear it and knew the litigation was pending? A. Well, I don't know now. There are so many different situations or angles to that and I imagine I did. If the suit was started, naturally it came to my attention.

The Special Master: You knew it was being handled through the Subscribers' Actuarial Committee?

General Bullitt: Read the question (Question read). I object to that question right now. We might as well face this once and for all. I object because that calls for a conclusion of the witness and not a statement of any fact. Ask him anything that was done, but that is calling for his conclusion.

The Special Master: Ask him who he thinks was conducting the litigation.

RDQ.105. (By Senator Hollingsworth) Who did you think or understand was conducting that litigation? A. I understood the companies had their committee that was handling the litigation.

RDQ.106. What was that? A. That was the Subscribers' Actuarial Committee.

RDQ.107. What was Mr. Street's connection with it? A. I understood he was the chairman of that committee.

RDQ.108. When you made this check to C. R. Street as agent, did you make it to him because you thought he was in charge or was making the disbursements in this lawsuit as your agent? A. I made that check to Charles R. Street as agent because Mr. Clark, who was on that committee and who was the only one that I ever had any dealings with in connection with it, had asked me to do it that way.

RDQ.109. To do it that way? A. Yes, sir.

RDQ.110. And why did you think it was a proper charge against your company? A. I didn't question it.

RDQ.111. What did you understand was the purpose of it? A. Well, as I say, attorneys' fees and expense.

RDQ.112. In connection with what? A. That is—why, I suppose with the litigation.

RDQ.113. What litigation? A. The Missouri impounded premiums.

RDQ.114. And your company was a party to that suit, wasn't it? A. I think so.

RDQ.115. Or those suits? A. Yes, sir.

RDQ.116. Party plaintiff? A. Yes.

RDQ.117. Is that right? A. I believe so.

RDQ.118. Well, you believed so at the time you made the check, didn't you, or you wouldn't have paid it? A. There is no question about it. When Mr. Clark told me to draw the check, I drew it out and sent it to him.

RDQ.119. Now, you knew that the Dubuque Fire & Marine Insurance Company had a suit pending in the Federal Court, did you not, for the return of these impounded premiums? A. Yes, we were with those companies, yes.

RDQ.120. And that is the litigation that you understood that Mr. Street's committee was handling? A. Yes, sir.

Senator Hollingsworth: That is all.

Re-Cross Examination by General Bullitt.

RXQ.121. Was C. R. Street a lawyer? A. I don't believe so.

RXQ.122. Was any member of the Subscribers' Actuarial Committee a lawyer? A. Not to my knowledge.

RXQ.123. Did you have any lawyers in this case? A. Not that I know of.

RXQ.124. Well, who brought this suit for you? A. Why, this committee, as I understand it.

RXQ.125. You have to have lawyers to bring it, don't you? A. Well, I think Hicks and Folonie were the only lawyers that I ever heard of.

RXQ.126. Weren't Hicks and Folonie the lawyers handling the case for you? A. I believe so, yes, sir.

General Bullitt: That is all.

(Witness excused.)

W. R. REILLY, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Mr. Reilly, what is your connection with the Dubuque Fire & Marine Insurance Company? A. Assistant secretary

Q.2. Acting under Mr. Weiser? A. Yes, sir.

Q.3. Now, were you present here in the room when Mr. Weiser testified? A. Yes, sir.

Q.4. Did you have any knowledge of any of the details of this litigation? A. I knew as to the final decree, which was rendered in February, that there would be a distribution of 50 per cent to the companies, 30 per cent to the attorneys and 20 per cent to the policyholders.

Q.5. And the 30 per cent was to be used for what purpose? A. As we understood it, for attorneys' fees and expenses.

Q.6. For attorneys' fees and expenses? A. Yes.

Q.7. That was for the attorneys for both sides, both the State— A. (Interrupting) I do not know.

Q.8. You don't know, but you understood it was to cover the companies' liability for attorneys' fees, whatever that would be, is that right? A. Yes.

Q.9. Now, did you ever discuss this matter with Mr. Charles R. Street? A. I never met the gentleman.

Q.10. Did you ever discuss it with Mr. H. A. Clark? A. I do not know the man.

Q.11. You don't know Mr. Clark? A. No.

Q.12. Now, the memorandum that you handed me a moment ago, I believe that was in the handwriting of Mr. Weiser? A. Yes, sir.

Q.13. When you got that memorandum, did you get any information from Mr. Weiser other than what was contained on the memorandum? A. None.

Q.14. You knew then that you were getting $6,400.00 out of the 30 percent item? A. I found that out after the receipt of the letter.

Q.15. After the receipt of the letter? A. From him.

Q.16. Did you hold the memorandum until the letter came? A. Yes.

Q.17. Why did you hold it? A. For no particular reason.

Q.18. Why didn't you act on it when you got it? A. Possibly other duties at the time interfered, would interfere.

Q.19. So you had the letter before you at the time you issued the checks as well as the memorandum? A. Yes, sir.

Q.20. Now, did you get any further information from Mr. Weiser about the matter? A. None.

Q.21. When the letter came, together with this memorandum to you, that you were getting 11 per cent refund out of the 30 per cent— A. (Interrupting) Well, of course, the total of those two checks, yes.

Q.22. That was 11 per cent? A. Yes.

Q.23. You also knew that you were required to issue a check for 5 per cent to C. R. Street, Agent? A. Yes.

Q.24. And you were advised that that was for attorneys' fees and expenses? A. Yes, sir.

Q.25. Well, you knew that the attorneys' fees were to be paid out of the 30 per cent item, did you not? A. According to the decree, yes.

Q.26. Did you call that fact to Mr. Weiser's attention? A. No, sir.

Q.27. Why didn't you? A. As a subordinate, I carried out the order of my superior.

Q.28. Even though you knew there was something out of the ordinary about it? A. I did not know.

Q.29. Well, you knew that the 30 per cent item was to take care of attorneys' fees, didn't you? A. According to the decree as rendered.

Q.30. According to the decree. Well, when you learned that the attorneys' fees to the extent of 5 per cent of the impounded premiums were to go to C. R. Street, Agent, that did cause an inquiry in your own mind about what was happening, didn't it? A. No.

Q.31. Didn't you wonder about it? A. No, sir.

Q.32. And you never thought about it in any way at all? A. No, sir.

Q.33. Did it occur to you that it was possibly an error? A. No, sir.

Q.34. You didn't discuss it with Mr. Weiser at all? A. No, sir.

Q.35. When you received your check for 11 per cent, that came from whom? A. I cannot say other than it was enclosed with that letter from Mr. Clark.

Q.36. That refers to Folonie and Street as trustees, does it not? A. I would just as soon see the letter before I answer the question.

General Bullitt: It speaks for itself.

A. Yes, sir.

Q.37. (By Senator Hollingsworth) Now, do you recall that your check did come from Folonie and Street as trustees? A. It did not come from them as far as I know. It was accompanied with this letter.

Q.38. Well, I mean it was issued by Folonie and Street as trustees? A. I cannot state the signatures.

Q.39. You don't remember that? A. No.

Q.40. Of course, when you got that, you assumed that 11 per cent of the 30 per cent item was for, available for distribution and that was its purpose to you? A. Yes.

Q.41. And it would not be needed for expenses such as attorneys' fees, etc.? A. That is it, yes, sir.

Q.42. Well, then, didn't it strike you as strange that this request came for 5 per cent for attorneys' fees payable to C. R. Street, Agent? A. No, it did not.

Q.43. It didn't make any impression on your mind at all? A. No, sir.

Q.44. Well, did you assume that it was attorneys' fees in this fire rate litigation? A. Did I assume this was?

Q.45. Did you assume or did you believe that it was for attorneys' fees in this litigation? A. I had no other conclusion.

Q.46. That was your conclusion, was it? A. Yes, sir.

Q.47. Well, did you go any further then with your reasoning? A. No, sir.

Q.48. As to why it was being done in that manner? A. No, sir.

Q.49. Or why it wasn't deducted out of the 11 per cent? A. No, sir.

Senator Hollingsworth: That is all.

General Bullitt: No questions.

(Witness excused.)

S. M. BUCK, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Please state your name. A. S. M. Buck.

Q.2. Where do you live? A. My residence address is 916 Judson Avenue, Evanston, Illinois.

Q.3. Are you a member of the Subscribers' Actuarial Committee? A. Yes, sir.

Q.4. When did you become a member? A. In December, 1937.

Q.5. What is your connection with the Firemen's Fund Insurance Company group? A. I have no connection, and have had none with the Firemen's Fund Insurance group since March 16, 1938.

Q.6. Prior to that time what was your connection? A. I was western manager.

Q.7. What companies constitute the Firemen's Fund Insurance Company group? A. Firemen's Fund Insurance Company, the Home Fire and Marine Insurance Company, and Occidental Insurance Company.

Q.8. The Occidental Insurance Company was not involved in the fire rate litigation in Missouri? A. No, sir, it was not entered in the state at that time.

Q.9. So the only two companies are the Firemen's Fund and the Home Fire and Marine? A. Yes, sir.

Q.10. What is the connection between those companies? A. Why, under the same management and there is some stock, or was at the time I was connected with them, some stock interest on the part of the Firemen's Fund. To what extent, I do not know.

Q.11. You were familiar with the facts of the pendency of the litigation in Missouri? A. Yes, sir.

Q.12. Did you know anything about a fund of $100,000.00 being raised in the spring of 1935 for the payment of attorneys' fees? A. No, sir.

Q.13. When did you first hear of that? A. After the report of the Federal Grand Jury this year at Kansas City.

Q.14. That is the Federal Grand Jury in Kansas City? A. Yes, sir.

General Bullitt: That was this spring, 1939, somewhere along about March?

A. Yes, sir.

Q.15. (By Senator Hollingsworth) Now, you knew that a compromise settlement of these cases was made in the spring of 1935, did you not? A. Yes, sir.

Q.16. When did you learn that with reference to the time that the compromise was actually executed and signed? A. I can't remember.

Q.17. Did you know about the negotiations before the settlement was effected? A. No, sir.

Q.18. So it was sometime after that? A. Yes, sir.

Q.19. How did you learn that? A. Well, that is difficult to say, because there were newspaper reports, the National Underwriters; I don't remember.

Q.20. Did you know that a decree was entered the next spring in February of 1936 on that compromise agreement? A. Yes, sir.

Q.21. Did you get a copy of it? A. I think we did. I won't be sure, but I think we did.

Q.22. Did you learn then that a declaration of trust had been entered into by Mr. Street and Mr. Folonie for the handling of certain portions of these funds? A. Yes, sir.

Q.23. In general, what were the terms of that trust agreement?

General Bullitt: I think that is—

The Special Master: It is in the evidence.

General Bullitt: That is the best evidence.

Q.24. (By Senator Hollingsworth) Well, you are familiar with it in a general way? A. I was at that time.

Q.25. You knew that 30 per cent was to be used for the purpose of payment of attorneys' fees and the expenses of litigation? A. I so understood, yes

Q.26. And that anything that remained out of the 30 per cent after the payment of the expenses of litigation and attorneys' fees was to be returned to the companies? A. Except the 20 per cent that was to go to the stockholders.

Q.27. I am talking about out of the 30 per cent. A. Will you state that question again, please, sir?

Q.28. You knew that out of the 30 per cent that had been set apart for the payment of attorneys' fees and expenses, that any balance remaining out of that 30 per cent after the payment of these attorneys' fees and expenses was to be returned to the company? A. Yes, sir.

Q.29. You knew that? A. Yes, sir.

(Memorandum, handed to the reporter, was marked for identification as "Defendants' Exhibit 48, EFM.")

Q.30. I hand you Defendants' Exhibit 48, which appears to be an office memorandum addressed to you, and dated 3-24-36. A. Yes, sir.

Q.31. By whom was that made? A. W. L. Leonard.

Q.32. Who is W. L. Leonard? A. At that time he was an agency superintendent of the Firemen's Fund Insurance Company.

Q.33. And in your office, was he? A. Yes.

Senator Hollingsworth: We offer in evidence Defendants' Exhibit 48.

(Which said Defendants' Exhibit 48, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Mr. Buck, — 3/24/36 11:06 AM

Please call Mr Stuart before banking checks

5/11	6/11	11 90-	
5.739.21	6881.05 =	1266.16	JJ Jund
1.259.22	511.08 =	190.90	W Hillman

D 48

Q.34. Now, I notice this is addressed to you, Mr. Buck, and says, "Please call Mr. Street before banking checks." These initials are "W. L. L."? A. Yes, sir.

Q.35. Now, Mr. Leonard, did he have any conversation with you about the time that you came into possession of this memorandum? A. I don't recall that he did. That represents the only communication of any sort I had from him in connection with that matter.

Q.36. Well, it says, "Please call Mr. Street before banking checks." What checks did it refer to? A. It referred to checks for the amount shown on there, representing 11 per cent of the impoundings for the Firemen's Fund Insurance Company and the Home Fire and Marine Insurance Company. This represented 11 per cent of the Firemen's Fund, and this of the Home Fire and Marine.

Q.37. And the checks that you got for each of these companies, did you receive a 5 per cent check and a 6 per cent check? A. One check, one check each. That is my memory, that we received one for each, a check for 12,626.00, payable to the Firemen's Fund, and $2,770.30 payable to the Home Fire and Marine.

Q.38. That is 11 per cent? A. That is 11 per cent.

Q.39. Were those checks with this memorandum at the time you received it? A. I am not sure, but I don't think they were.

Q.40. You think that this notation was made on it after you received it? A. Yes.

Q.41. After you received the memorandum? A. Yes.

Q.42. Did you call Mr. Street? A. Yes, sir, I did.

Q.43. Where were you when you called him? A. My recollection is that I was in our office, then located at 33 South Clark Street, Chicago.

Q.44. You called Mr. Street here in Chicago? A. Yes, sir.

Q.45. And you had a conversation with him? A. Yes, sir.

Q.46. What conversation did you have with him? A. I told him that—first, may I say that Mr. Street called me and said he was sending me two checks representing 11 per cent of the impoundings of the Firemen's Fund Insurance Company and the Home Fire and Marine Insurance Company, and on receipt of those checks, I was to send him a check for 5 per cent of the impoundings, and in the conversation I said, "Well, what are

they for?" He said, "In payment of expenses, expenses in connection with this compromise settlement." I said, "How shall I account for these on our records?" "Well," he said, "we are going to give you a full accounting in due course, and any entry you might make would be temporary anyway, but I would suggest legal expenses or any other item that you think would be a proper place for it."

Q.47. He didn't tell you then that it was, in fact, legal expenses? A. No, but the inference was very strong.

Q.48. He said that it was for expenses? A. Well, he mentioned in that connection, he says, "You will recall that we have agreed to pay the attorneys' fees of the state representing several hundred thousand dollars."

Q.49. Is this the first conversation that you had with Mr. Street? A. Yes, sir.

Q.50. Have you detailed that entire conversation? A. As I recall it, yes, sir.

Q.51. Then you found this memorandum on your desk? A. Yes.

Q.52. Which said before banking the checks, to call Mr. Street? A. That is right.

Q.53. Did you call Mr. Street? A. Yes, sir.

Q.54. What was your further conversation with him then? A. I wanted to know more about it, if he could give me any more details about what these checks covered.

Q.55. He had asked that you call him, or someone had, "Please call Mr. Street"? A. That was a memorandum from Mr. Leonard to me. Now, whether Mr. Street had called for me and I was out and Mr. Leonard took the message, I don't know. I am not familiar with those circumstances.

Q.56. But what was it that impelled you to call Mr. Street? What was it that you wanted to know? A. I wanted to know more about the details, because I was being required, as manager of the company, to issue some checks, and I wanted a little more information about what those checks were to cover, so that I could report adequately to my home office.

Q.57. At the time you called him, you had before you the 11 per cent checks or had them in your office? A. I think that is right, yes.

Q.58. And you knew that that was out of the 30 per cent fund? A. I assumed it. I didn't know it. I assumed it.

Q.59. And you knew that the 30 per cent fund was for the purpose of payment of attorneys' fees and expenses? A. Yes, sir, I so understood it.

Q.60. And did that raise an inquiry in your mind as to why you should be compelled to issue a check to Mr. Street for attorneys' fees and expenses when you had just gotten the 11 per cent return out of the 30 per cent fund? A. Not particularly, no, sir.

Q.61. Well, did you ask him about it? A. Only to the extent that I have just stated.

Q.62. What was it that you asked him? A. I asked him if he could give me more details as to what these 5 per cent checks were to cover.

Q.63. What did he say? A. He said expenses, and then referred to the agreement to pay attorneys' fees to the state.

Q.64. Now, at that time you had in your mind the fact that the 30 per cent was allocated for that purpose, didn't you? A. Yes, sir.

Q.65. Did you ask him why? A. No.

Q.66. It did occur to ask why, didn't it? A. I don't know that it did particularly.

Q.67. Well, not particularly, but generally. You knew that 30 per cent of these impounded premiums had been set up for that purpose? A. I had been so advised, yes.

Q.68. You knew that the impounded premiums were in excess of $9,000,000.00, didn't you? A. Well, I wouldn't say definitely that I knew the exact figure, but I knew it ran into a large figure, yes.

Q.69. Approximately $10,000,000.00? A. Yes.

Q.70. You knew that 30 per cent of that would be in excess of $2,500,000.00? A. Yes.

Q.71. You knew that $2,500,000.00 and more money had been available for the payment of litigation expenses and attorneys' fees? A. To be perfectly candid about it, I didn't analyze the extent—

Q.72. (Interrupting) Whether you analyzed—

The Special Master: Just a minute. Let's see what he has to say.

A. Mr. Street had been handling this litigation ever since I had been in the Middle West, and had been chairman of the committee, and personally I had implicit confidence in him, and for that reason I didn't inquire into the details that you have enumerated.

Q.73. I am not asking whether you inquired into them, Mr. Buck. I am asking you if you knew those facts. A. Well, presumably I did at the time.

Q.74. You did know that? A. Yes.

Q.75. When he asked you for a 5 per cent check for additional attorneys' fees and expenses, didn't it occur to you that there were in the hands of Mr. Street and Mr. Folonie, as trustees, $2,500,000.00, or in excess of that, for the payment of those very items? A. No, sir, it didn't occur to me.

Q.76. It didn't occur to you? A. No, sir.

Q.77. And didn't it occur to you as strange that you would receive from the trustees 11 per cent, and then be asked to put back through a different agency, C. R. Street, Agent, 5 per cent for some unknown expense? A. No, sir, it didn't.

Q.78. That didn't strike you as strange at all? A. No, sir.

Q.79. But you did want to know more about it? A. Because I had to account to my home office, and I wanted to know where to put it on our records.

Q.80. And was that all you wanted to know about it? A. Yes.

Q.81. Just where to put it on your records? A. That is right.

Q.82. And you were not told what the expense was for? You said—what did you say about what you were told? A. Only to the extent I have just mentioned, that it would cover expenses of this compromise.

Q.83. Expenses of the compromise? A. Yes.

Q.84. Attorneys' fees were not mentioned? A. Yes, they were mentioned.

Q.85. At the time that you wrote this check, you inferred, of course, that other companies were writing similar checks? A. I didn't write the check.

Q.86. I mean— A. (Interrupting) I authorized the issuance of the check by H. A. Bush, the assistant manager.

Q.87. At the time you authorized it to be issued, of course, you inferred that other companies were writing similar checks? A. I was told that by Mr. Street.

Q.88. You were told that? A. Yes.

Q.89. You knew that that amounted to some $450,000.00? A. No, I hadn't stopped to calculate that.

Q.90. You knew how much was impounded? A. Yes.

Q.91. You knew that 5 per cent of the $9,000,000.00 fund would be $450,000.00? A. I never stopped to consider that.

Q.92. You were not interested enough in the total expense of this litigation to stop to make those calculations? A. I did not. I trusted Mr. Street implicitly.

Q.93. But you didn't make a calculation then that $2,500,000.00 was to go for that purpose, if necessary, and then you were called on for $450,000.00 more? A. No, I didn't. The only calculation I made is that shown on the memorandum of Mr. Leonard's there, where we show the 5 per cent and 6 per cent of our own impoundings.

Q.94. Now, at the time that this memorandum was made, on 3-24-36, you learned from Mr. Street, did you not, that you were to pay back to Street as agent 5 per cent before you actually received the check? A. Yes, that is my recollection, that he telephoned me that he was sending me checks representing 11 per cent by a special messenger.

Q.95. Why did he telephone you advising you of that fact instead of simply mailing them to you?

General Bullitt: You would have to ask Mr. Street that.

A. I don't know.

Q.96. Was he urging you to send your check on? A. No, there was no urgency about it. It was in a matter-of-fact sort of a way. There wasn't any pressure about it.

The Special Master: Were you both in the same town at the time?

A. Yes, sir. He was at his office in Chicago and I was in mine in Chicago.

Q.97. Did you receive a letter from Mr. Street at the time the checks were sent to you by messenger? A. I don't recall, sir. I haven't seen the files since I left the employ of the Firemen's Fund Insurance Company. I am not sure whether there was a letter of enclosure or not.

(A photostatic copy of a letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 49, EFM.")

Q.98. I hand you Defendants' Exhibit 49, and ask you if that is the letter, a photostatic copy of the letter that your office wrote Mr. Street at the time you sent him— A. (Interrupting) That appears to be a carbon copy of a letter written by assistant manager Bush to Mr. Street.

Senator Hollingsworth: We offer in evidence Defendants' Exhibit 49.

(Which said Defendants' Exhibit 49, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

March 27, 1936

PERSONAL

Mr. C. R. Street
c/o Great American Insurance Company
310 South Michigan Avenue
Chicago, Illinois

Dear Mr. Street:

We acknowledge checks received from you representing 11 per cent of premiums impounded in the Missouri rate case for the Fireman's Fund and Home Fire and Marine, as follows:

Fireman's Fund	$12,626.26
Home Fire and Marine	2,770.30

We are also enclosing checks payable to your order as agent for 5/11 of these amounts, or $5,739.21 for the Fireman's Fund and $1,259.22 for the Home Fire and Marine.

Yours very truly,

Assistant Manager.

HAB C
P
Encls.

16 2/3 % Impounded Premiums
as of May 1, 1935

SEE ATTACHED

D 49

DEFENDANTS' EX. 49, EFV

Mr. Berger: Mr. Bush is now dead, isn't he?

A. Yes.

Q.99. (By Senator Hollingsworth) You say that Mr. Street advised you that this was for the payment of expenses and attorneys' fees? A. Expenses, and mentioned attorneys' fees incidentally. He didn't say "and attorneys' fees."

Q.100. In this letter from your office, I believe written by Mr. Hobart, it makes no mention as to what these checks are for, does it, that you remitted out to Mr. Street? There is no mention made as to what they are for? A. There is no mention here, no.

Q.101. Is there any record in your office as to what those remittances to Mr. Street were for, expenses or attorneys' fees? A. I couldn't say. I haven't seen the file.

Q.102. Are you familiar with those files there? A. I have only glanced at them.

Q.103. Do your ledgers and journals, or ledgers and cash books show the purpose for which these Street checks were issued? A. I couldn't say. I haven't examined that.

Q.104. Will you look at the photostatic copies before you and state whether it shows the purpose for which they were issued to Mr. Street? A. Well, there is $12,626.26 for Firemen's Fund shows Missouri sixteen and two-thirds impounded dividends.

Q.105. I am talking now about the checks that you issued to C. R. Street, Agent.

The Special Master: You are talking about the receipt and he is asking you about the disbursements, the contemporaneous disbursement.

A. Oh, the 5 per cent disbursement?

The Special Master: Yes.

A. No, this does not show.

Q.106. Is there any record in your office anywhere showing that you attributed this payment to Mr. Street to expenses or attorneys' fees? A. Well, I can't say. As I say, I haven't been connected with the company for a year and a half, but I assume that they do.

Q.107. Well, you were familiar with the records of the Firemen's Company when you were there, weren't you? A. Yes, sir.

Q.108. You recognize those as photostatic copies of the records of that company? A. Yes, sir.

Q.109. Now, is there any record in there anywhere showing that that payment to Street was allocated to attorneys' fees or expenses. A. Of course, I am not familiar with those records. The chief accountant kept these records, and not being a bookkeeper myself, I am not as familiar with them as I might otherwise be, but I don't find on these records here—

The Special Master: Just a minute. I can cut that Gordian knot. Have you examined that photostatic copy?

Senator Hollingsworth: I have hurriedly, and I don't think it shows. I don't want to say positively. I ran through it and the idea came to me; I don't think it shows attorneys' fees or expenses.

The Special Master: Does it show the payment at all?

Mr. Berger: Yes.

Senator Hollingsworth: Yes, I think it shows.

The Special Master: Let's see what the entry shows about the payment. That is the way to find out. There wouldn't be any separate entry. The entry will show what it is or it won't show what it is.

Mr. Berger: If you will look at the heading, "Amounts Paid" in red ink.

A. Missouri Refund Account is the way it is entered there.

The Special Master: If you will, Mr. Witness, read the whole account, giving the title of the account, the amount and the date, showing the disbursements of the Firemen's.

A. The caption to the page is "Firemen's Fund, Insurance Fund, Agency Cash," under date of December 23, 1937.

Mr. Bullitt: That is later.

A. That is the later refund; that is not the item.

Judge Henson: That is not the 5 per cent.

Mr. Bullitt: You will find the first one on the account in the month of February, under cash received and paid, the month of March, 1936.

The Special Master: You are looking at 1937 instead of 1936.

Mr. Bullitt: There is the first one. There is the amount of the check (indicating) and here is their entry.

Mr. Berger: Here is "Cash Paid and Received," month of March, amounts paid in red ink. There is your 11 per cent in and your 5 per cent out (indicating).

The Special Master: Just read the account and see what it says.

A. "Missouri sixteen and two-thirds, imp." I don't know—

The Special Master: Impounded account.

A. "11 per cent Dividend Account" it says.

The Special Master: What else does it say?

Mr. Berger: Over under the heading, "Cash Received and Paid, Amounts Paid" in red ink.

A. It has two items, $12,626.26; immediately under it, $5,739.21.

The Special Master: That answers your question.

Judge Henson: With a ring around it.

Mr. Berger: That was put on to identify it.

The Special Master: Let's have an admission when you have photostats that have both red and black ink and it is all going to show up in the photostat one color, it is ordinarily the custom to put circles around those that appear in red ink. Is that what you did here? What is the circle here?

Mr. Berger: The circle was put around to identify the item for the Federal Grand Jury.

The Special Master: In order to be able to find it.

Mr. Berger: Yes.

General Bullitt: We circled everything for Mr. Milligan.

Mr. Berger: On the original the $12,626.26 is in red ink, the $5,739.21 in black ink.

The Special Master: I wanted to know what the circle amounted to. I knew it wasn't there originally.

Mr. Berger: That was put there so they could find it quickly.

Q.110. (By Senator Hollingsworth) Now, will you state why it is, if you know, that after receiving information from Mr. Street that your disbursement here of 5 per cent was for attorneys' fees and expenses, and you called him up to ask specifically what it was for, that none of your files or records seem to show what it was for? A. The only answer I can give to that is that when—that we were given to understand there would be an accounting, a detailed accounting.

Q.111. When was that coming? A. Well, I don't know. I wasn't told.

Q.112. How often do you report to your home office? A. Monthly.

Q.113. Well, did you have any assurance that it would come within the month? A. No.

Q.114. And it didn't come within the month, did it? A. As I recall, no.

Q.115. And you did report to your home office? A. Yes, sir.

Q.116. Did you make any explanation to your home office of what it was for? A. As I recall, I directed a letter to the first vice-president of the company the day these checks were drawn, advising him of the fact.

Q.117. That letter doesn't appear to be in our files. Do you have a copy of that letter here with you? A. No, sir.

Q.118. The Firemen's files should show that? A. It should, yes, sir.

Q.119. You have a distinct recollection of having written it? A. It is my recollection that I wrote a letter to San Francisco that day, the day these checks were issued, explaining just as I have explained to you, to the home office the entire transaction.

Q.120. The explanation that you have given here today, as you recall it, was the explanation that you put in that letter? A. Yes, that is right.

Q.121. And you think that that letter should be in the files? A. It should be in the files.

Q.122. If you wrote that to the company and gave them that explanation, why didn't you put it on your books of account? A. Well, the letter was in the file. The file would support the item of the account.

Q.123. But when you pay out attorneys' fees generally you entered it on your books, didn't you, as attorneys' fees, and to whom it was paid? A. Yes.

Q.124. Why did you do differently in this case? A. For the reason stated, that I didn't know it was attorneys' fees or legal expenses or anything else, except that as indefinitely stated to me by Mr. Street, and that I expected an accounting which would enable us to properly place the item where it should be.

Q.125. Well, you put it on your original books of account in the regular entries of your daily business, did you not? A. Yes.

Q.126. You never received any accounting from then on? A. No, sir.

Q.127. Well, when that accounting didn't come—that was in 1936, I believe; how long did you stay with the company? A. Until March 15, 1938.

Q.128. When that accounting didn't come, did you make any effort to find out what your disbursement was for? A. No, sir.

Q.129. Why didn't you? A. Because the matter was in the process of closing out and there was still—we understood there was still some of the 30 per cent in the hands of the custodian that eventually would be refunded to us, and I assumed when that was done we would have that accounting.

Q.130. Do you mean the 30 per cent, that there was some left in the 30 per cent? A. That is my understanding, yes.

Q.131. In the hands of the trustees instead of the custodian? A. Well, wherever it was.

Q.132. So you did understand there was still money in that fund for the payment of attorneys' fees and expenses? A. No, there was still money in the hands either of the custodian or the trustees. Eventually we expected to be reimbursed in the companies, and when that was done, we would have a final accounting.

Senator Hollingsworth: That is all. In connection with this witness' testimony, I would like to introduce in evidence the file which I believe will be understood was furnished to us by the Examiner.

General Bullitt: Put it all in.

Mr. Berger: It includes a lot of entries on the books that have never been explained by anybody.

The Special Master: Let him put it in. Maybe he will explain it later on.

Senator Hollingsworth: That includes Defendants' Exhibits 48 and 49.

Mr. Berger: You do not want to put the first page in, the grand jury page and the letter of—

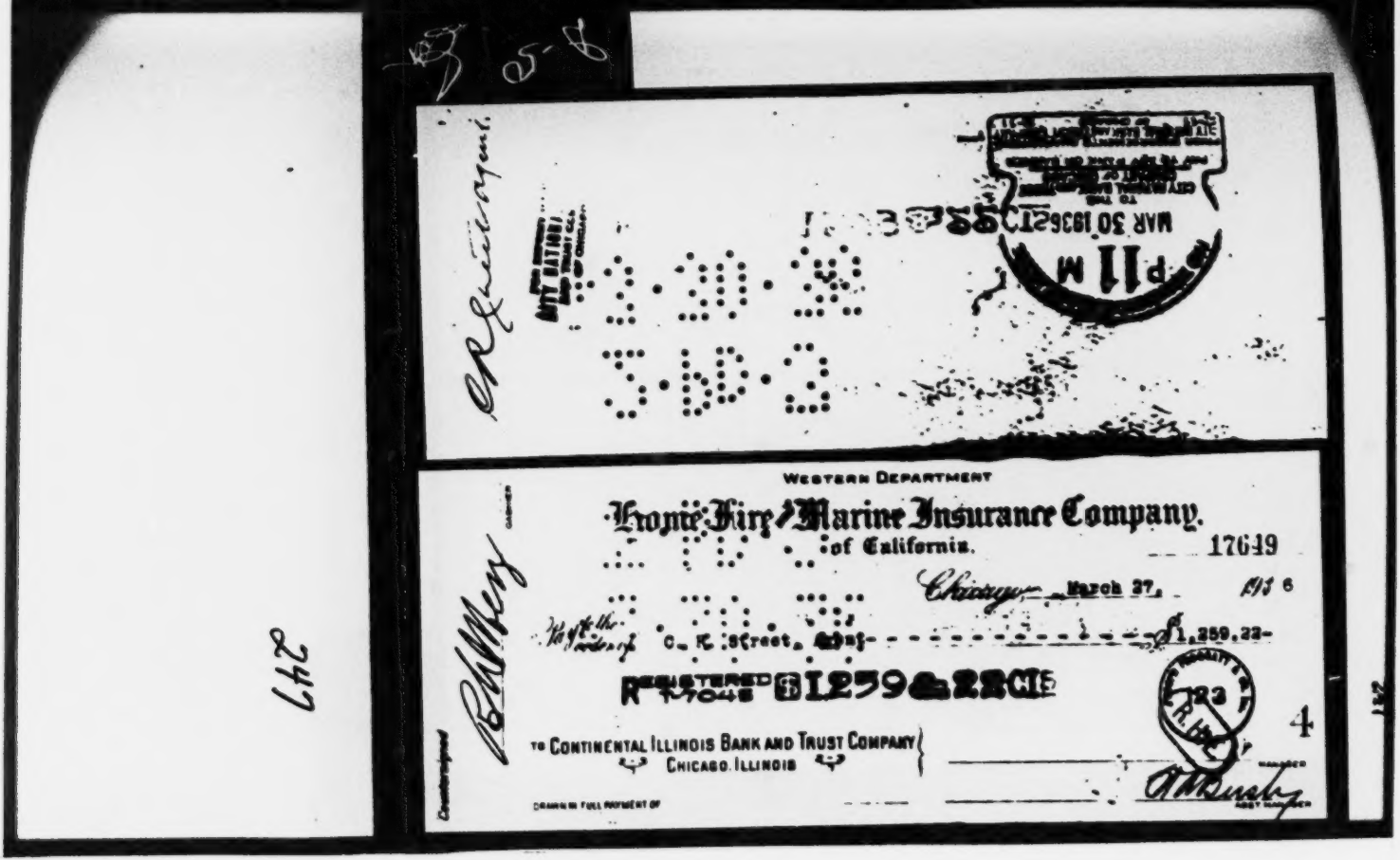
Senator Hollingsworth: (Interrupting) Well, I will withdraw that offer and simply allow my previous offer of Exhibits 48 and 49 to stand.

(Checks, handed to the reporter, were marked for identification as "Defendants' Exhibits 50 and 51, EFM.")

Mr. Berger: What is 48?

Senator Hollingsworth: Exhibit 48 is this memorandum; 49 is the letter of March 27th. Now, the checks are 50 and 51, which we offer in evidence.

(Which said Defendants' Exhibits 50 and 51, so offered in evidence, having been previously duly marked, are in words and figures as follows:)



WESTERN DEPARTMENT

Home Fire & Marine Insurance Company.
of California.

17649

Chicago, March 27, 1936

Pay to the Order of C. K. Street, Agt. $1,259.22

REGISTERED R 137048 $1259.22CIE

TO CONTINENTAL ILLINOIS BANK AND TRUST COMPANY
CHICAGO, ILLINOIS

DRAWN IN FULL PAYMENT OF

MAR 30 1936 CHICAGO

Countersigned

R. W. Merry

A. H. Busby

WESTERN DEPARTMENT

Firemans Fund Insurance Company.

55271

Pay to the order of C. R. [illegible] March 27, 1893

$5,738.21

123

LEX

24$

Senator Hollingsworth: I think that is all.
Mr. Berger: I think that is all, Mr. Buck.
(Witness excused.)

HERBERT A. CLARK, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Please state your name. A. Herbert A. Clark.

Q.2. Where do you reside, Mr. Clark? A. 922 Lathrop Avenue, River Forest, Illinois.

Q.3. Mr. Clark, are you a member of the Subscribers' Actuarial Committee? A. Yes, sir.

Q.4. How long have you been a member? A. Since 1921.

Q.5. Are you connected with any fire insurance companies? A. Yes, sir.

Q.6. Which ones? A. The Firemen's and affiliated companies. Do you want me to give the names of all of them?

Q.7. Yes, that is known as "The Firemen's Insurance Company group"? A. That is right.

Q.8. Give me the names of the companies affiliated with the Firemen's group that were involved in the Missouri rate litigation? A. The Firemen's Insurance Company of Newark, New Jersey, the Girard Fire and Marine Insurance Company of Philadelphia, the Mechanics Insurance Company of Philadelphia, the National Ben Franklin Fire Insurance Company of Pittsburgh, the Superior Fire Insurance Company of Pittsburgh, the Concordia Fire Insurance Company of Milwaukee, Mechanics—and the Milwaukee Mechanics Insurance Company of Milwaukee.

Q.9. Did you mention the Pittsburgh— A. That is an underwriter of the Firemen's.

Q.10. Did you mention Concordia? A. Yes.

Q.11. What is your official connection with this group of companies? A. Vice-president.

The Special Master: Of each?

A. Vice-president of each.

The Special Master: A common management?

A. That is right.

Q.12. I believe you were a member of the Actuarial Committee at the time this litigation originated? A. Yes, sir.

The Special Master: Pardon me. Were you located in Chicago during that time?

A. Yes, sir. I was in Chicago, not with these companies, however, but I was in Chicago.

The Special Master: Did you give your official connection with these companies as of the time when this litigation was going on? A. No, sir, I gave it as of the time that—well, I can put it this way: I have been with these companies since 1925.

The Special Master: All right.

Q.13. And with the committee since 1921? A. That is right.

Q.14. You were with the committee at the time the litigation developed? A. Yes, sir.

Q.15. What was the connection of the Actuarial Committee with this litigation? A. Well, the Subscribers' Committee undertook, of course, to handle the litigation for all of the companies members of the Western Actuarial Bureau.

Q.16. That involved all of the companies in this litigation? A. Yes, sir.

Q.17. So the activities of the committee were for all of the companies, were they? A. Yes, sir.

Q.18. Now, in the early part of 1935, did some discussion arise with reference to a compromise or settlement of this litigation? A. Yes, sir.

Q.19. Who conducted the negotiations in regard to that compromise? A. Mr. Street.

Q.20. Did you know whether he had had any negotiations before he reported to the committee or not? A. Well, there were—at different times we would hear about a compromise and Mr. Street on several occasions reported to the Committee that he had had letters from agents wanting to have this litigation compromised, and he said he had even had a letter from some chambers of commerce in Missouri.

Q.21. I mean persons with whom he was actually trying to negotiate a settlement. What was his first report to you in regard to that, the parties to the suit and their attorneys or agents? A. Well, he never told us —never told me, at least, of any particular individual that he had been negotiating with.

Q.22. Did he report from time to time to the committee? A. You mean with respect to the compromise? No, sir, he never did, except for that one time that he told us that there was a possibility of compromising the litigation. I don't think it ever came back to us again.

Q.23. When was that? A. I think about the early part of 1935. I couldn't tell you the month.

Q.24. Was that at a committee meeting? A. Yes, sir.

Q.25. Was a minute made of that meeting? A. Yes, sir.

Q.26. Now, I hand you Defendants' Exhibit 17, which purports to be extracts from minutes of a meeting of March 19, 1935, and ask you to state if that is the meeting to which you referred? It shows you present. A. Yes, sir, that is correct.

Q.27. That is the meeting? A. Yes, sir.

Q.28. At that time did Mr. Street tell you as to the progress made? A. In regard to negotiations, no, sir.

Q.29. Did he tell you with whom he was negotiating? A. No, sir.

Q.30. I notice this: "It was voted the sense of the meeting that the Chairman be authorized to proceed with the conferences." What conferences? A. Well, he said that he had had some conferences with people in Missouri. He didn't say with whom, and we just authorized him to go ahead and proceed with the matter.

Q.31. What did he say the conferences were? A. Looking toward a compromise.

Q.32. Did he tell you what the terms of the conferences were? A. No.

Q.33. The proposed compromise? A. No, sir.

Q.34. Did anybody ask? A. I don't recall that they were.

Q.35. Well, why did you vote that he go ahead with these conferences if you didn't know anything about what the provisions were? A. Well, we thought if he would go ahead with them, he could bring back something concrete to the committee.

Q.36. So you told him to go ahead? A. Yes, sir.

Q.37. You thought he would report back? A. Yes, sir.

Q.38. Why, in this very meeting, didn't you give him full power to act?

General Bullitt: I think the paper speaks for itself.

The Special Master: No, it does not.

General Bullitt: Doesn't it? All right.

The Special Master: It is the most ambiguous thing I ever saw.

General Bullitt: All right.

Q.39. (By Senator Hollingsworth) Now, you gave him full power to act, didn't you? A. Well, my understanding of that was in—my thought was we would give him full power to proceed with the conferences, thinking, of course, he would report back to the committee.

Q.40. The power was to go ahead and make the compromise; wasn't that what you referred to? A. Well, that is the way that reads, but on my own part, I never intended he should go ahead and compromise without bringing it back to the committee.

Q.41. You did give him power, whatever the word meant? A. I think we did, whatever that meant.

Q.42. Now, you said the conferences which he had had were approved didn't you? A. I will read this exactly from your paper, "In other words the conferences which he has had were approved." A. Yes, sir.

Q.43. "And he was requested to proceed with those contemplated 'with power.'" Now then, you approved those conferences? A. Yes, sir.

Q.44. Well, you knew what they were, didn't you? A. No, aside from having conferences; that is all we knew about it.

Q.45. He said, "I have had a conference or more," and you took some action and said, "They are approved." A. They were approved insofar as they were looking towards a compromise of the litigation.

Q.46. Well, he had at least told you that the conferences referred to a compromise; you got that much out of him? A. Yes, indeed.

Q.47. You approved it? A. Yes, sir.

Q.48. And then, "And he was requested to proceed with those contemplated." Who are "those contemplated"? A. I don't know. Is that the way that reads, "those contemplated," "he was requested"?

General Bullitt: I think it means those contemplated conferences.

The Special Master: We cannot construe that. That is ambiguous.

Q.49. (By Senator Hollingsworth) "And he was requested to proceed with those contemplated 'with power.'" A. I can't answer that. I can't explain it.

Q.50. Sir? A. I don't know.

Q.51. You do know that he was given power? A. Yes, sir.

Q.52. And power to do what? A. Well, according to that, it was to effect a compromise? A. Yes, sir.

Q.53. That is the way you understood it? A. No, I didn't. I understood my own—

Q.54. (Interrupting) Now—

General Bullitt: Let him finish.

The Special Master: Wait a minute.

Q.55. I am sorry I interrupted you. A. What was the question? (Question read.) I understood that he was given power to proceed with the conferences.

Q.56. With whom? A. Well, with whom he had been conferring.

Q.57. Who was it? A. We don't know. He never told us.

Q.58. Did you ask him? A. No, sir.

Q.59. Why didn't you ask him? A. Well, I don't suppose he would have told us if we had asked him, because he was that type of man that kept it to himself.

Q.60. He kept that secret? A. Yes, sir.

Q.61. And you knew he was keeping it secret? A. Well, yes, sir.

Q.62. And you approved it and gave him power, knowing he was keeping it secret from you? A. Well, that is—I think I have answered that before. Yes.

Q.63. By "those contemplated," who did you understand that that meant? A. I don't know. I can't explain that.

Q.64. Why didn't you write the names down there, or at least designate the parties, by saying "the Missouri attorneys," if that is who you thought it was.

Mr. Berger: I object to the form of the question.

The Special Master: Yes, he did not write that. Mr. Hobbs, I think, wrote that.

Q.65. (By Senator Hollingsworth) About that time did you learn from any source of a fund of $100,500.00 being raised by Mr. Street? A. No, sir, I did not.

Q.66. When did you first hear of that fund? A. I don't think I ever knew anything about it until it came out in the papers.

Q.67. Now, I show you Defendants' Exhibit 20, which purports to be at least extracts from the meeting of the committee on that date, and shows you present. Does that refresh your recollection as to those proceedings referred to in those minutes? A. Yes, I remember that.

Q.68. Sir? A. Yes, sir, I remember that.

Q.69. That was the meeting of November 27, 1935. The compromise agreement had been signed? A. Yes, sir.

Q.70. That was signed on May 16, 1935, or about that date, if you don't remember exactly? A. Yes, sir. I don't remember the exact date.

Q.71. I notice this: "The Chairman outlined the request received from the attorneys for a substantial payment on the outstanding bills in Missouri which was desired at this time largely to ease their burden in connection with the Federal Income Tax and because of the tax problems arising out of the settlement of the estate of Mr. Hicks."

The Special Master: Just a minute. Did Mr. Hicks, Mr. Folonie's partner, die about that time?

A. I think so, yes, sir.

Q.72. "It has been suggested that a special assessment be run by the Missouri Inspection Bureau to raise sufficient funds to liquidate the present outstanding bills amounting to approximately $300,000.00. However, it was the consensus that it would not be advisable or practicable at this time to run a special assessment." What was the reason for that? A. I don't know.

Q.73. You don't know? A. No, sir.

Q.74. Then I believe, without reading it, that a loan of $150,000.00 was proposed, and Mr. Street was given the power to go with Mr. Terry to negotiate this loan through a St. Louis bank for the purpose of applying $150,000.00 to the fees owing to the attorneys? A. Yes, sir.

Q.75. Those are the company lawyers? A. That is right.

Q.76. That was done? A. Yes, sir.

Q.77. That loan was made and that was paid to the company lawyers? A. Yes, sir.

Q.78. $150,000.00?

Mr. Berger: It was paid to Hicks and Folonie.

Q.79. (By Senator Hollingsworth) Hicks and Folonie? A. Yes, sir.

Q.80. And that left $150,000.00 remaining on attorneys' fees? A. Yes, sir.

Q.81. And the compromise had been signed? A. Yes, that is right.

Q.82. And you knew of no more attorneys' fees, did you? A. I knew of what?

Q.83. You knew of no more attorneys' fees that the companies would owe? The compromise was signed.

Mr. Berger: I object to that as a statement of fact.

The Special Master: No, he asked him if he knew of any more. He is only asking about his knowledge. A. No, I didn't know of any, but there very likely would have been more.

Q.84. But you understood that the major portion of the litigation was settled and out of the way?

Mr. Berger: We object to that. The state case was on appeal to the Supreme Court, and the restitution case was still in the process of having hearings, and it was before the final judgment of the restitution case. The litigation was a long ways from being inactive or through in November of 1935.

The Special Master: His recollection was that he apprehended there would be more attorneys' fees.

Mr. Berger: I was trying to correct counsel in stating there wasn't any more to do.

General Bullitt: It is leading. I do think if he asks the witnesses for the facts, if they show themselves hostile, you can, but throughout this whole thing—

The Special Master: Of course, you understand in this situation it wouldn't take as much showing of hostility due to the fact he has to go to the people, and he wouldn't be expected to be glad to furnish this information that he wants.

General Bullitt: We have given him everything.

The Special Master: I know. What I said does not apply to this witness.

Q.85. (By Senator Hollingsworth) At least you understood that was the amount of their bill to date, $300,000.00? A. Yes, sir.

Q.86. Now, prior to that time had there been any payments made to attorneys? A. Yes, sir.

Q.87. Do you know how much? A. No, I do not.

Q.88. Would the records of the committee show the approval of the bills or would that have to go to the Western Underwriters Association or Missouri Inspection Bureau to find that out? Would the records of the committee show? A. Yes, sir, I think they would.

Q.89. You think they would? A. Yes, sir.

Q.90. That was in 1935. Now then, 1936, I believe the decree was entered. Do you recall that? A. Yes, sir.

Q.91. And then following that you recall that a declaration of trust was made by Folonie and Street? A. Yes, sir.

Q.92. And you recall how that was allocated, 20 per cent to policyholders? A. Yes, sir.

Q.93. And 30 per cent for the payment of expenses? A. Correct.

Q.94. And 50 per cent outright from the custodian to the companies? A. That is right.

Q.95. And now the declaration of trust, you were familiar in a general way with its terms and provisions? A. No, sir.

General Bullitt: What is the answer?

A. No. I never saw it, as a matter of fact.

Q.96. Do you know that it provided that disbursements out of the 30 per cent fund by the trustees should be on approval of Mr. Jackson, who, I believe, was secretary of the committee at that time? A. Parker?

Q.97. Mr. Parker, Jackson Parker, or by two members of the Actuarial Committee? A. Yes, sir.

Mr. Berger: Just a minute. I do not think that is quite right.

Senator Hollingsworth: Let's get it exactly right.

Mr. Berger: I don't think it was Mr. Parker or two of the members.

Senator Hollingsworth: I may be in error.

Mr. Berger: "Evidenced by the orders and directions for payment of the money upon certificate of J. V. Parker as Secretary, or his successor, of the action of such committee or upon the signed order of any two such members." All Mr. Parker had to do was to certify to the committee or two members of the committee.

Senator Hollingsworth: Or two members.

Mr. Berger: It wasn't Mr. Parker's discretion.

Senator Hollingsworth: "Which shall be evidence of the action of such committee in authorizing and directing any payments from such moneys and funds."

A. Yes, sir.

Q.98. (By Senator Hollingsworth) That refreshes your recollection about that? A. Well, I never saw that before, but I knew that was the practice that they did in disbursing that money.

Q.99. Now, you say there had been a practice of that kind? A. No. I say when the money was disbursed from that trust fund, it was ordinarily approved by two members of the committee.

Q.100. And thereafter when money was disbursed, it was brought before the committee, and the committee's action was taken by one of these methods? A. No, sir. When money was disbursed from that fund, it was approved by any two members of the committee.

Q.101. Then the trustees disbursed after the approval? A. That is right.

Q.102. That custom was pursued? A. Yes, sir.

Q.103. Now, the 30 per cent was to pay, first, the state's attorneys in this litigation; that is right, isn't it? A. That is right.

Q.104. In the State of Missouri? A. Yes, sir.

Q.105. And then it was to pay other expenses of litigation, is that right? A. That is right.

Q.106. And then to pay the fees of the company attorneys? A. That is right.

Q.107. And the remainder was then to be paid over to the companies, if any remained in this 30 per cent fund? A. That is right.

Q.108. You understood that all along? A. Yes, sir.

(Instruments, handed to the reporter, were marked for identification as "Defendants' Exhibits 52 to 61, both inclusive, EFM.")

Q.109. I show you Defendants' Exhibit 52, which I now offer in evidence, which is a letter dated March 9, 1936, signed "C. R. Street and R. J. Folonie, Trustees," whereby they remitted a 6 per cent dividend out of the 30 per cent. A. Yes, sir.

(Which said Defendants' Exhibit 52, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

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WESTERN DEPARTMENT
315 SOUTH MICHIGAN AVENUE
POST OFFICE BOX 758
CHICAGO

Great American Insurance Company
New York

C R STREET
VICE PRESIDENT
G D GREGORY
SECRETARY

CHICAGO March 9, 1936.

Mr. Clark:-

We enclose check for $1899.85, being 6% of the amount of your impounded premiums in Missouri as of May 1, 1935.

This is a distribution out of the 30% of the fund turned over to us as Trustees for the discharging of company liabilities in connection with this rate litigation - we think this can be done without reducing the fund below the limit of safety.

C. R. STREET
R. J. FOLONIE
Trustees.

		30%
Firemens	7214.88 ✓	2164.46
Girard	2184.30 ✓	655.29
Mechanics	464.59 ✓	139.38
Milwaukee Mechanics	4065.27	1219.58
National Ben Franklin	1631.92	489.58
	15560.96	
Concordia	3429.89	1028.97
	18990.85	5697.26

Q.110. Did that have the approval of the committee or, that being a dividend, did you require approval? I don't know. I am asking you. A. I don't know myself.

Q.111. You don't know yourself?

Mr. Berger: I don't think there is any doubt, if you are willing to take it, but what the committee approved the distribution of the 11 per cent.

Senator Hollingsworth: I am perfectly willing to take your statement.

Mr. Berger: That is in Mr. Hobbs' records.

Senator Hollingsworth: You understand now that the committee approved that 6 per cent disbursement?

Mr. Berger: Well, it approved the 6 per cent, and then it was changed to 11 per cent.

Senator Hollingsworth: That is right.

Mr. Berger: That is all covered by Mr. Henne's and Mr. Folonie's report, filed in court.

Q.112. (By Senator Hollingsworth) Now, you received in this letter, check for $18,990.00, which represented a 6 per cent refund out of the 30 per cent fund for your group of companies? A. That is right.

Q.113. At the time that the committee authorized that payment, it was clearly understood that they could safely do that and take care of all expenses? A. Yes, sir.

Q.114. Now, I don't know whether this file shows or not, Mr. Clark, but was that check voided, and the 11 per cent check issued? Now, I call your attention to a letter addressed to Miss Bircher and signed by H. A. Clark, Vice-President, being Defendants' Exhibit 53, which I now offer in evidence; the memorandum shows void, 3-25? A. Yes, sir.

(Which said Defendants' Exhibit 53, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

March 13, 1936

Miss Bircher:

Re: MISSOURI 16-2/3 IMPOUNDED PREMIUMS

Enclosed you will please find checks aggregating $18,990.85 from C.R.Street and R.J.Folonie, Trustees.

These checks, as you will note from the attached letter from the Trustees, represent 6 per cent of the amount of Loyalty Group companies' impounded premiums in Missouri as of May 1, 1935. This is a distribution out of the 30 per cent of the impounded fund which was turned over to the Trustees for the discharging of company liabilities in connection with the Missouri rate litigation, under which companies were required, by Court order, to impound 16-2/3 of the premiums collected during the pendency of the litigation. The checks payable to our various companies, and representing the total amount remitted to us, are as follows -

Firemen's	$7,214.88
Girard	2,184.30
Mechanics	464.59
Milwaukee Mechanics'	4,065.27
National-Ben Franklin	1,631.92
Concordia	3,429.89
TOTAL	$18,990.85

While these checks do not represent exactly 6 per cent of the amount of our impounded premiums as shown by our records as of May 1, 1935, I am advised by the Trustees that they do represent 6 per cent of the amount of our impounded premiums as of that date as shown by the Court records.

We have been requested by the Trustees to remit to them for attorneys' fees and expenses 30 per cent of the amount represented by the enclosed checks. Will you, therefore, please issue checks for 30 per cent of the amount set opposite each company as indicated above, making said checks payable to C.R.Street and R.J.Folonie, Trustees. To cover this transaction checks should be drawn as follows -

Firemen's	$2,164.46 -	40820
Girard	655.29 -	40808
Mechanics	139.38 -	21383
Milwaukee Mechanics'	1,219.58 -	22955
National-Ben Franklin	489.58 -	26193
Concordia	1,028.97 -	20358
TOTAL	$5,697.26	

PAID
MAR 13 1936
CHECK NO.

H.A.CLARK,
Vice-President.

HAC-EP

Q.115. Then that 6 per cent check was voided, was it not? A. Just let me look through my files.

Mr. Berger: No, not the 6 per cent; it is 30 per cent of the 6 per cent, if you will read that memorandum. He ordered 30 per cent of the 6 per cent.

Senator Hollingsworth: You are right.

Q.116. Then I was in error in stating that the 6 per cent check was voided? A. Perhaps I can clear that up.

The Special Master: You state how it was. I would like to hear you state.

A. Under date of March 9th, Mr. Street wrote me this letter, or rather brought it into my office, and brought these checks for $18,990.85, and asked me to give him 30 per cent of that amount, which I did. Subsequently he returned those checks for the 30 per cent and then brought back another remittance of, I think, 5 per cent, and asked me to void the checks that I had heretofore given to him and give him checks for 5 per cent of the impounded premiums. That is the transaction shown here.

Q.117. Now, at the time that you got this 6 per cent check, as shown by Mr. Street's letter of March 9, 1936, the committee had authorized that payment? A. Yes, sir.

Q.118. Then Mr. Street delivered this letter, I believe, to your office, you said, did you not? A. That is right.

Q.119. And he asked you to give him 30 per cent of that 6 per cent? A. Yes, sir.

Q.120. For what purpose did he ask you to give him that 30 per cent? A. He said he wanted it for legal expenses.

Q.121. What legal expenses? A. Well, I don't know. I presumed he wanted it for expenses for our own attorneys.

Q.122. Now, you knew—I believe you stated a while ago—that the 30 per cent was specifically allocated for that purpose? A. That is correct.

Q.123. And you had just gotten 6 per cent returned? A. That is right.

Q.124. And the committee had found that you could safely return 6 per cent? A. Yes, sir.

Q.125. And yet here was Mr. Street privately in your office, asking you to give him a check for 30 per cent of the 6 per cent for attorneys' fees? A. Yes, sir.

Q.126. And did he tell you what attorneys it was for? A. No, sir. He said for attorneys' fees.

Q.127. For attorneys' fees? A. I might add that I thought at that time that—I thought it was to be a part of this payment to the state and to the Insurance Department, that was agreed upon in the compromise settlement.

Q.128. Why, you knew that you took that into consideration when you authorized the distribution of 6 per cent, didn't you? A. I don't know as I quite follow that.

Q.129. Your committee had authorized a distribution of 6 per cent? A. Yes, sir.

Q.130. You had figured that as being a safe margin? A. Yes, sir.

Q.131. And in order to figure that you had to calculate the money that was to come out of it, didn't you? A. That is right.

Q.132. You did calculate it, didn't you? A. That is right.

Q.133. You included the state's attorneys and also the companies' attorneys? A. Yes, sir.

Q.134. Then when Mr. Street came privately to your office to ask you for 30 per cent of this 6 per cent, you never asked him a single question? A. Oh, yes, I did.

Q.135. What did you say to him? A. I asked Mr. Street why he didn't take that out of the 30 per cent trust fund.

Q.136. What did he say? A. He said that the money that he was asking for, that the checks he was asking for now was used, he wanted for deferring expenses not only in the Federal Court cases, but in the State Court cases, and he felt he had no right to take anything out of the trust fund to pay any expenses in the State Court cases. That seemed to be a plausible reason, so I gave him the checks.

Q.137. You thought it was to pay attorneys in the State Court cases? A. He told me in both.

Q.138. Both what? A. Both the Federal and the State Court.

Q.139. How much of the 30 per cent of the 6 per cent was he going to allocate to Federal Court? A. I don't know.

Q.140. But he was to give some to the Federal Court attorneys? A. That is what Mr. Street told me, yes, sir.

Q.141. Now, you knew that all attorneys' fees for all attorneys in the Federal Court had been taken care of, didn't you?

Mr. Berger: No, that is not a fact.

Senator Hollingsworth: Do you know as to that fact?

Mr. Berger: The predication is not on a proper fact.

Q.142. (By Senator Hollingsworth) Well, that was his explanation to you? A. Yes, sir.

Q.143. You gave it to him? A. I did.

Q.144. And you made it to him? A. Mr. Street as agent.

Q.145. Agent of whom? A. I just gave it Charles R. Street, Agent.

Q.146. Agent of whom? Whose agent was he?

General Bullitt: That is calling for a conclusion.

The Special Master: No, he may know what he intended by that, or whether he intended anything by it.

A. I suppose it was our agent.

Q.147. He was your agent? A. Yes, sir.

Q.148. Then you received an additional 5 per cent? A. Yes, sir.

Q.149. Was that authorized by the committee? A. Yes, sir.

Q.150. And again the committee had before it the question of the disbursements out of the 30 per cent fund? A. Yes, sir.

Q.151. And you knew then that all attorneys' fees in connection with the Federal Court cases in Missouri up to date had been paid?

Mr. Berger: I object to the form of the question as predicated upon a fact which is not true. Ask the witness what the facts are, instead of counsel. It is not a fact.

The Special Master: Yes, you are just making statements of fact to this witness. You are not really asking him.

Senator Hollingsworth: Well, I will ask him.

Q.152. Now, did you take into consideration, when you were determining the disbursement of the additional 5 per cent, the attorneys' fees for which you were liable? A. Yes, sir.

Q.153. To what extent? A. Well, we had no way of knowing. We knew there would be a lot more attorneys' fees, because the litigation was far from ended.

Q.154. To what extent, what amounts? A. Well, I couldn't answer that.

Q.155. Do you have any record anywhere? A. I don't think so. At least I haven't.

Q.156. Does the committee? A. I don't know whether the committee has it or not.

Q.157. How much did you allow for attorneys' fees at that time?

General Bullitt: Just a minute. That is assuming that they did allow something for attorneys' fees.

The Special Master: Yes.

Q.158. (By Senator Hollingsworth) I mean how much did you calculate for attorneys' fees at that time? A. I couldn't tell you. I couldn't answer that.

Q.159. You don't know? A. No, sir.

Q.160. Well, the 5 per cent came to you? A. Yes, sir.

Q.161. Who is Miss Bircher? A. That young lady, she is our cashier.

Q.162. I show you Defendants' Exhibit 53, and ask you to state if that is a letter that you wrote to Miss Bircher in regard to the additional checks? A. That is right.

Q.163. Five percent? A. Yes, sir.

Q.164. That is the 6 per cent, Mr. Clark. A. Oh.

Q.165. Now, I show you Defendants' Exhibit 54, dated March 24, 1936, some eleven days subsequent to the 6 per cent check? A. Yes, sir.

Q.166. That is another letter that you wrote to Miss Bircher, is it not? A. Yes, sir, that is right.

Q.167. I notice this statement here in the last paragraph, "The trustees have returned to us, and you will find them attached, the checks which we issued under date of March 13, 1936, aggregating $5,697.26, and have requested in lieu thereof, that we make a check for each of our companies payable, to C. R. Street, Agent, for 5 per cent of the amount of our impounded premiums as of May 1, 1935, this to be payment on account of our proportion of attorneys' fees and expenses in connection with this litigation. Please issue checks accordingly and indicate on this memorandum the amount of the check issued for each company of our group." Now, you say there in this letter that the "trustees have returned to us these checks and have requested in lieu thereof." Did the trustees request that? A. No, sir. That isn't a correct statement. I mean it does not read exactly right. Mr. Street, as a matter of fact—

Q.168. (Interrupting) Mr. Street personally did that? A. That is correct.

Q.169. And he did that with a personal call? A. That is right.

Senator Hollingsworth: We offer in evidence Defendants' Exhibit 54.

(Which said Defendants' Exhibit 54, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

March 24, 1936

Miss Bircher:

MISSOURI 16-2/5 IMPOUNDED PREMIUMS

Under date of March 13, 1936 we received from C.R.Street and R.J.Polonie, Trustees, checks aggregating $18,990.85, representing approximately 6 per cent of the amount of Loyalty Group companies' impounded premiums in Missouri as of May 1, 1935. This was a distribution out of the 50 per cent of the impounded fund which was turned over to the Trustees for discharging of the companies' liabilities in connection with the Missouri rate litigation.

You will find attached a further remittance from the Trustees amounting to $18,389.04, which represents approximately an additional 5 per cent of the amount of Loyalty Group impounded premiums as of May 1, 1935. The checks, for the several companies, making up this amount, are as follows -

		Attorney fees 5%
Firemen's	$6,012.40	6162.33 ✓
Girard	1,820.25	1865.75 ✓
Mechanics	387.17	396.85 ✓
Milwaukee Mechanics'	3,387.72	3472.41 ✓
National-Ben Franklin	1,359.93	1393.93 ✓
Concordia	2,858.24	2929.70 ✓
Superior	2,255.47	2311.86 ✓
Pittsburgh Underwriters	329.86	338.11 ✓
	$18,389.04 ✓	18851.14 ✓

The Trustees have returned to us, and you will find them attached, the checks which we issued under date of March 13, 1936 aggregating $5,697.26, and have requested in lieu thereof, that we make check for each of our companies, payable to C.R.Street, Agent, for 5 per cent of the amount of our impounded premiums as of May 1, 1935, this to be payment on account of our proportion of attorneys' fees and expenses in connection with this litigation. Please issue checks accordingly and indicate on this memorandum the amount of the check issued for each company of our Group.

H.A.CLARK,

Vice-President.

HAC-EP

D-54

Q.170. And then the checks were issued for the respective amounts due from each one of your companies? A. That is right.

Q.171. Those are Defendants' Exhibits 55, 56, 57, 58, 59, 60 and 61? A. That is right.

Senator Hollingsworth: Which exhibits I now offer in evidence.

(Which said Defendants' Exhibits 55, 56, 57, 58, 59, 60 and 61, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

The Concordia
Fire Insurance Company
of Milwaukee

Western Department
Chicago, Mar 25 1936 19 No. 20404

Pay to the order of
R. R. Adams Agent
Registered $285 and 24 cts Dollars

$ 285.24

305

First National Bank
of Chicago, Ill.

Vice President
W. W. Bircher
Cashier

If check is not correct please return it at once.
Endorsement is receipt in full for account as follows:

Payment for account
Returned for account 285.24

Pay Any Bank or Trust Co. or Banker
Prior Endorsements Guaranteed
City National Bank and Trust Co.
of Chicago

Paid through Chicago Clearing House
P 11 M
Mar 26 1936
To the
City National Bank and Trust
Co. of Chicago

R. R. Adams Agent

768

Firemen's Insurance Company of Newark, New Jersey
ORGANIZED 1863

Western Department
CHICAGO, MAR 25 1936 19

No. 40868

PAY TO THE order of
E. C. Stuart Agent
$61.62

33

REGISTERED
RJ-1620

$61.62 and 33 cts DOLLARS

TO THE
CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

E. C. Stuart
Vice-President

W. A. Barker
Cashier

IF CHECK IS NOT CORRECT PLEASE RETURN IT AT ONCE.

ENDORSEMENT IS RECEIPT IN FULL FOR ACCOUNT AS FOLLOWS:

Expense account		
Attorney fee & expenses	61.62	33

E. C. Stuart agent

FOR DEPOSIT WITH
CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO

FIRE INSURANCE EXCHANGE & CASUALTY BRANCH
MAR 26 1936
7 1 M

PAY TO THE ORDER OF ANY BANK OR TRUST COMPANY OR BANKER IN THE UNITED STATES OR CANADA. PAYMENT GUARANTEED. NO COLLECTION FEE.

270

The Girard
Fire and Marine Insurance Company
INSURANCE EXCHANGE
CHARTERED 1809

CLAIMS DEPARTMENT
CHICAGO MAR 25 1936 19

No. 40847

PAY TO THE ORDER OF

$182.25

REGISTERED
R.J. 3.0.80 $182 and 25 cts DOLLARS

TO THE
CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

WE'LL APPRECIATE
CASHIER

IF CHECK IS NOT CORRECT PLEASE RETURN IT AT ONCE.

ENDORSEMENT IS RECEIPT IN FULL FOR ACCOUNT AS FOLLOWS:

Payment on account		
Attorney fee for defending suit 11/20		25

PAY DIRECT WITH
CITY NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

PAY TO ANY BANK OR BANKER
FOR COLLECTION
PRIOR INDORSEMENTS GUARANTEED
CITY NATIONAL BANK AND TRUST COMPANY
CHICAGO

FIM
MAR 26 1936

270

Mechanics
Philadelphia

MAY 25 1938

No. 28401

PAY TO THE ORDER OF

$ 37.17

Thirty-seven and 17 cts Dollars

CITY NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

Agent

FOR DEPOSIT WITH
CITY NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

271

272

Milwaukee Mechanics Insurance Company

WESTERN DEPARTMENT

CHICAGO, MAR 25 1936 19

No. 23033

PAY TO THE ORDER OF

$ 33772

REGISTERED R-J-3080 $33772 DOLLARS

TO CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO (2-39)

VICE-PRESIDENT

CASHIER

306

IF CHECK IS NOT CORRECT PLEASE RETURN IT AT ONCE.

ENDORSEMENT IS RECEIPT IN FULL FOR ACCOUNT AS FOLLOWS:

Payment on account		
Attorney fee & expenses	337	72

Chas. Rhett Agent

PAY TO ANY BANK OR BANKER

MAR 26 1936

FTM

FOR TRADERS ERRAND & CLEAR DESK

272

National-Benfranklin
Fire Insurance Company
of Pittsburgh, Pa.
ORGANIZED 1866

WESTERN DEPARTMENT

CHICAGO, MAR 25 1936 192 No. 26237

$1359.93

PAY TO THE ORDER OF

C. R. Lovett, Agent

REGISTERED J-2080 $1359 and 93 cts DOLLARS

305

TO THE NORTHERN TRUST COMPANY, CHICAGO,

2-15/7

VICE-PRESIDENT

ASHIER

IF CHECK IS NOT CORRECT PLEASE RETURN IT AT ONCE.

ENDORSEMENT IS RECEIPT IN FULL FOR ACCOUNT AS FOLLOWS.

Payment on account
Attorney fee expenses 1937 #1

C. R. Lovett agent

FOR DEPOSIT WITH CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

PAID THROUGH CHICAGO CLEARING HOUSE
P 11 M
MAR 26 1936
TO THE CITY NATIONAL BANK and TRUST COMPANY of CHICAGO

2

Bill 99 EC 8

WESTERN DEPARTMENT

No. 23033

Superior Fire Insurance Company
ORGANIZED 1867

WESTERN DEPARTMENT
CHICAGO, MAY 5 1936 19

No. 12608

PAY TO THE ORDER OF

$ 1015.21

REGISTERED $1015 and 21 CTS 284 DOLLARS

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

C. R. Street Agent

PRESIDENT

SECRETARY

CASHIER

IF CHECK IS NOT CORRECT PLEASE RETURN IT AT ONCE.

ENDORSEMENT IS RECEIPT IN FULL FOR ACCOUNT AS FOLLOWS:

Payment on account		
attorney fees & expenses	1015	21

C. R. Street Agent

FOR DEPOSIT WITH
CITY NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

PAID THROUGH CHICAGO CLEARING HOUSE

MAY 11 1936
CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

11M

274

V3

The Special Master: While you are here, let me ask you something.

A. Yes, sir.

The Special Master: You said you asked Mr. Street why he didn't pay it out of the funds in the hands of the trustees, and he said he thought he had no right to because at least part of it was for the litigation in the state court?

A. That is right.

The Special Master: What litigation was there in the state court?

A. Those were some—I don't remember the number of companies that had this same issue in the state court, that these companies had in the federal court.

The Special Master: You would not be paying out of the state court the expenses that were incurred by other companies?

A. No, I probably should have elaborated on that a little bit. Mr. Street made this further statement, that when this matter was finally concluded, that they would have an adjustment as between the companies in the state court and the federal court cases as to expenses. Do I make that clear?

The Special Master: Well, I do not know whether you do or not. He was asking your company to forward money on account of a settlement of a similar litigation for other companies in the state court?

A. Yes, sir.

The Special Master: And then afterwards they would make it back to you?

A. Yes, sir.

The Special Master: Did you ask him why he didn't go to those companies, the ones that were interested in that litigation, to get his advance?

A. No, sir, I didn't. I assumed at the time I talked to him that the bills that the attorneys had rendered would be common both in the state court and in the federal court cases, and he probably would have maybe one set of bills to pay that applied to both the federal and state cases, and that is what he wanted that money for.

Mr. Berger: Judge Barnett, to help clarify that, the Circuit Court of Cole County had refused to follow the settlement and had entered a judgment against the state court companies.

The Special Master: I understand all that. I understand all that, but what we are trying to get at is this

man's understanding, and what he did was motivated by what he understood the situation to be. Now, I know there is a lot of litigation, but he said that Mr. Street gave him an explanation which was apparently satisfactory to him, and I want to know what information he had and how he understood it. You did understand that he wanted your company to put up some money because there were payments to be made in the state court on account of a similar case brought by other companies?

A. Well, he told me he wanted money to pay for expenses in both the state and the federal court. I didn't go into the matter with him. I just assumed that it was a reasonable request without going into all of the particulars. I just gave him the checks.

The Special Master: All right.

Q.172. (By Senator Hollingsworth) Now then, I notice by Defendants' Exhibit 24 another meeting, which does not show you were present, a meeting of the Actuarial Committee, dated October 23, 1936. "The bills of Attorney Folonie and Attorney Morrison of Kansas City covering fees and expenses for the year 1935 in connection with the Missouri rate suit were presented by the Chairman, together with an outline of the amount paid in the past. Following a general discussion, payment of the bills by the Trustees of the Special Fund was approved by Messrs. Harding and Koeckert. The signatures of two are required under the provisions of the trusteeship."

The Special Master: Was this witness present at that meeting?

Senator Hollingsworth: No, he was not, apparently.

Q.173. Now, was the action of the committee taken on October 23, 1936, ever called to your attention? A. I don't recall that it was, no, sir.

Q.174. Did you, as a member of the committee, any time thereafter learn that the attorneys' fees of Messrs. Folonie and Morrison for the year 1935, in connection with the Missouri rate litigation, had been approved and paid? A. I don't recall that it was ever specifically called to my attention.

Q.175. Were the minutes of the last meeting read at the next ensuing meeting? A. No, sir.

Q.176. They were not? A. No, sir.

Q.177. On December 8, 1936, as shown by Defendants' Exhibit 25, you did attend a meeting, didn't you? A. Yes, sir.

Q.178. You had a letter from Attorney Folonie referring to the "developments in the past few months in the rate litigation in Missouri." It was referred to but not read. At that meeting was there any mention made of the former meeting or any of the business transacted in connection with the former meeting? A. I don't think so.

Q.179. Did you ever know that Messrs. Folonie and Morrison were paid for the year of 1935? A. I couldn't state positively. We were paying them bills for some twelve or fourteen years, and I couldn't recall any specific year.

The Special Master: It wasn't any new thing for you to allow attorneys' fees, was it?

A. No, sir.

Q.180. But you had paid in March of 1936, the companies had paid, as you knew, approximately $450,000.00 to Mr. Street for attorneys' fees? A. That is right.

Q.181. Well, you would learn, wouldn't you, that at sometime in 1936 a bill had been allowed against the trustees for Messrs. Folonie and Morrison for services in 1935?

Mr. Berger: The bill was not against the trustees, Mr. Hollingsworth.

Q.182. Well, against the trust fund. A. Well, I couldn't recall it specifically. I probably knew it at the time, but I don't remember it now.

Q.183. Well, when you learned it, if you did learn it, didn't it occur to you that the $450,000.00 which had been made up for Mr. Street in 1936 ought to pay a lot of attorneys' fees? A. Well, yes, it should, but, of course, as I understood it, we had the expenses of the state to pay also.

Q.184. Out of this fund? A. Yes, sir.

The Special Master: Do you know of any other litigation pending against the insurance companies in the State Court besides the rate case brought by those individual insurance companies that didn't join in the Federal cases?

A. No, sir.

Q.185. (By Senator Hollingsworth) Did you assist Mr. Street in gathering up any of these attorneys' fees? A. Assist him in gathering them up? I don't know that I quite understand.

Q.186. The 5 per cent attorneys' fees? A. Oh, you mean—yes, sir, I did.

Q.187. How did that come about? A. Why, Mr. Street came into my office and when he came in to ask me for the checks, he stated that the Dubuque Fire and Marine Insurance Company, which was the only bureau company in the litigation besides our own companies, would also be called upon to contribute, and he asked me if, as a member of the committee representing the bureau, if I would take it up with Mr. Weiser and assist him in getting the checks, and I told him I would.

Q.188. Was there any urgency for getting the checks right away? A. He asked me to call him on the telephone. I don't know what the urgency might have been, but I did as he requested me to do.

Q.189. Of course, there was no record made of that telephone conversation? A. Well, yes, I sent him a memorandum after I telephoned Mr. Weiser.

Q.190. You put your own confirmation on what you said? A. That is right.

The Special Master: That is not in this record. Explain what you mean by a "bureau company" as distinguished—

A. (Interrupting) Well, there are two sets of companies in this litigation.

The Special Master: I know, but it is not in this record. Just state it briefly so those things will be intelligible.

A. Well, the Western Insurance Bureau is an organization composed of about thirty companies. They are in an organization for the purpose of cooperating in good underwriting practices.

The Special Master: Dealing with agents?

A. Dealing with agents, yes, sir.

The Special Master: Then there is a bigger organization?

A. Then there is the Western Underwriters Association, which is the larger organization.

The Special Master: Which represents the most of the companies?

A. Which represent the most of the companies, and as I said before, the Dubuque and our group of companies were the only companies in this litigation who are members of the Western Insurance Bureau. All of the others were Western Underwriters.

The Special Master: They do not conform in their contracts, the agencies of the two companies?

A. Substantially, although they have some differences with respect to commissions.

The Special Master: I just want to kind of clear up these vague expressions as we go along.

Mr. Berger: You know it but the record does not.

The Special Master: That is it, yes.

Senator Hollingsworth: I believe that is all.

Cross Examination by General Bullitt.

XQ.191. Mr. Clark, when you stated that the Subscribers' Actuarial Bureau undertook to handle the litigation, wasn't that a purely self appointed and voluntary action on the part of that committee? A. It was.

XQ.192. Did your company or your group of companies or any other companies, so far as you know, ever by telephone, by telegraph or by letter, or by personal, verbal request ever ask the Actuarial Bureau to handle this litigation? A. No, sir.

XQ.193. When you said that you made these checks to Mr. Street as agent for your company, what did you have him as your agent for in giving him those checks? In other words, what was he your agent to do? A. Well, I don't know. We made the checks out that way because he asked me to do it.

XQ.194. That is the only reason you made it out payable to him? A. That is right.

XQ.195. He just asked to have the check made out in that way? A. That is right.

General Bullitt: That is all.

(Witness excused.)

JOHN C. HARDING, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Please state your name. A. John C. Harding.

Q.2. Where do you reside, Mr. Harding? A. Evanston, Illinois.

Q.3. Are you a member of the Subscribers' Actuarial Committee? A. Yes, sir.

Q.4. How long have you been a member? A. Well, I think I have been a member since 1926.

Q.5. And you are also connected with the Springfield Fire and Marine Insurance Group? A. Yes, sir.

Q.6. That group consists of the Springfield Fire and Marine, the Michigan Fire and Marine, the New England Fire Insurance Company and the Sentinel Fire Insurance Company?

The Special Master: Was that true in 1935 and 1936?
A. Yes, sir.

Q.7. What is your connection with this group? A. Well, my official title is resident executive vice-president in charge of the Western Department.

Q.8. That was likewise in 1935 and 1936?

The Special Master: You are, in fact, the manager of the Western Department; that is what it amounts to?

A. Yes, that is what that means, yes.

Q.9. Now, when you came into the Actuarial Committee in 1926, of course this Missouri rate litigation was pending? A. That is right.

Q.10. And thereafter the committee directed that litigation through the attorneys? A. Yes.

Q.11. And in 1935, I believe, a discussion began to arise in regard to a compromise of the litigation? A. There were rumors of it, yes.

Q.12. When was the first discussion with reference to negotiations for a settlement? A. Well, I couldn't say offhand. I don't recall when that was.

Q.13. Recalling that the settlement was made, or the compromise agreement was executed on May 18, 1935, would you say it was sometime during the early part of 1935? A. I would think that is probably correct.

Q.14. I believe that Mr. Street was in more close connection with it than any of the other members? A. He was not only in close connection; he was the sole connection.

Q.15. And he reported from time to time to the committee? A. Well, I wouldn't say that exactly, because he didn't report.

Q.16. Well, at least he went through the form of making some kind of a report? A. Well, it was very "formy."

The Special Master: Did you permit him to do that?

A. Because we had the utmost confidence in him.

The Special Master: Well, didn't you have any confidence in yourself?

A. Well, in negotiations, one man can do a better job, I don't care what the negotiation is, one man can do a better job, and we thought he was the best qualified man for the job, and then he had a yen for that sort of thing, too.

The Special Master: Yes, I know, but there has been evidence here indicating that he not only wouldn't tell the committee what he was doing, but that they didn't

ask, some of them said, because they didn't believe he would tell if they did.

A. Well, I think that is probably true, yes. I wasn't curious about it personally. It was well handled, and I was satisfied to leave it.

Senator Hollingsworth: Had you finished?

The Special Master: Yes.

Q.17. I show you the Defendants' Exhibit 17, which is a memorandum of the minutes of a meeting held by the committee. Does that refresh your recollection as to that meeting? A. Well, I wouldn't—not of that particular meeting, of some meeting, yes.

Q.18. Mr. Street did, at that time, address the meeting in regard to the proposed settlement of this litigation? A. Well, I wouldn't—that is not my recollection of it. I think he brought more, as I recall it—

Q.19. (Interrupting) Who was chairman—

General Bullitt: Let him finish his answers.

A. He was reciting, I think, the pressure that had been brought to bear on him to bring about a settlement of this trouble. A lot of the agents and field men and chambers of commerce thought it was time the thing was closed up.

Q.20. Well, this action was taken after Mr. Street addressed the meeting, was it not? A. That is right.

Q.21. "It was voted the sense of the meeting that the Chairman be authorized to proceed with the conferences in the manner outlined during the discussion." A. That is right.

Q.22. "And report back to the committee at a future meeting the results of such further conferences." A. That is right.

Q.23. He had at least mentioned some conferences, hadn't he? A. He mentioned a lot of conferences.

Q.24. All right. What conferences did he mention? A. He mentioned it with these representatives of the chambers of commerce, agents, our own field men of our own companies.

Q.25. So you didn't understand that to refer to conferences with anybody who had power to settle the litigation? A. No, I did not.

Q.26. You did not so understand it? A. I did not so understand it.

Q.27. So on March 19, 1935, did you have any information that there were any negotiations between par-

ties who had authority to act in regard to a settlement? A. No.

Q.28. Mr. Street had not reported that at that time? A. No.

Q.29. You didn't know that there was any contact between your side of the case on the one hand, and the other side of the case on the other? A. No, sir.

Q.30. For the purpose of a settlement at this meeting? A. No, sir.

Q.31. Then I notice this further minute, "In other words, the conferences which he has had were approved." What did he report that required the approval of the committee, and which the committee did take action on and approve? A. Well, I don't think the word "approval" there has quite the weight to it which it might seem to have in the reading of that minute. It says everything. He had reported it all, the conferences, the pressure that had been brought to bear on him. I think his report of that was approved just in the course of business. I don't think there was anything that required any special approval, except a favorable comment in that sense.

Q.32. "And he was requested to proceed with those contemplated." You had in mind "those contemplated." Who were they? A. I don't know.

Q.33. Here is a minute of your meeting. Can't you explain that? A. I don't know, and I don't think any member of the committee knows. I don't think it was disclosed.

General Bullitt: It says "those conferences," if your Honor please.

Senator Hollingsworth: Just a moment, please. If you are going to testify, Mr. Bullitt, you should testify as a witness.

General Bullitt: I am not trying to.

The Special Master: He is asking him what he means. I think that is perfectly proper.

General Bullitt: Let him look at it and tell.

The Special Master: It is awfully hard to understand, and he is asking what it did mean.

Q.34. (By Senator Hollingsworth) "To proceed with those contemplated." Did you understand that to mean persons? A. It could have hardly meant anything else, could it?

Q.35. Sir? A. It could hardly mean anything else.

Q.36. I don't think so myself. Mr. Bullett interprets it differently. Who were those persons? A. I don't know, except—

Q.37. Why did you request him to proceed with persons when you didn't know who the persons were? A. I wouldn't care personally, with my regard for Mr. Street, who he said he was going to confer with. I had such confidence in him that I would have been willing to—

Q.38. (Interrupting) Did he mention to you that he had certain persons in contemplation? A. No, not to my recollection.

Q.39. How did this minute then happen to be made about those persons contemplated if you didn't have any idea of it?

Mr. Berger: I object to the form of the question, as the testimony has been by Mr. Hobbs that he made these minutes. They were his creation. To ask some member of the committee why Mr. Hobbs used certain language is certainly going beyond the realm of speculation on the part of this witness.

Senator Hollingsworth: This is the official action of the committee.

Mr. Berger: But it is not the committee's recordation. It is the secretary's recordation.

Senator Hollingsworth: It is the committee's action, and it is the evidence of it.

The Special Master: I cannot tell what happened at that meeting from that. He is asking what happened at that meeting. I think it is proper.

Q.40. (By Senator Hollingsworth) Were those Missouri personages? A. I would say that they were Missouri persons who are field men, our agents, and the representatives of commercial organizations.

Q.41. That is who you understand they were? A. That is who I understand.

Q.42. Why did you add, "those contemplated 'with power'"? What power did he need to exercise with regard to chambers of commerce and field men? A. Well, just the same; he could do just what he pleased with them, so far as I was concerned.

Q.43. Don't you know that it was intended to do this: authorize him to act for the committee with men who had control or might control the disposition of this litigation? Don't you know that that meant that? A. Well, it was pretty broad, I will say that.

Q.44. Now, you had some information that there were men in Missouri who might be able to dispose of this litigation, didn't you? A. We didn't have information that there was. We assumed there must be somebody there. I would naturally assume there must be somebody in the State of Missouri.

Q.45. That might get it disposed of? A. Yes.

Q.46. Had Mr. Street mentioned the names of any of those men in Missouri? A. He did not, not to my knowledge.

Q.47. Well, was the name of R. Emmet O'Malley mentioned? A. I would say not.

Q.48. Was the name of Thomas J. Pendergast mentioned? A. It was not.

Q.49. Was the name of A. L. McCormack mentioned? A. It was not.

Q.50. Did he tell you that he was in conference with these men whom you supposed had power to dispose of it?

General Bullitt: Now, wait. I object to that.

Senator Hollingsworth: Without naming them.

The Special Master: Let's hear the objection.

General Bullitt: My objection is that he assumes—just read the question again (Question read).

The Special Master: I did not hear him assume anything.

General Bullitt: Now, Mr. Harding has never said he supposed Pendergast and O'Malley—

The Special Master: No, he did not, but he said he supposed there were men in there. Now, he is asking him did he tell—

General Bullitt (Interrupting): He gives these men's names, "these men whom you suppose."

The Special Master: No, that question does not mean that, Mr. Bullitt.

General Bullitt: Yes, it does.

The Special Master: Here is what that question is, as I understand it: this man said he assumed, of course, there were men who had power.

Senator Hollingsworth: That is right.

The Special Master: Then he asked him, did he think that it referred to those men, whoever they were. That is the way I understand that question.

A. Well, I think that would have been a natural inference.

Q.51. (By Senator Hollingsworth) Sir? A. That might be a natural inference.

Q.52. That he had conferred with the men in Missouri who might have power to settle it? A. It might be.

Q.53. Did he tell you that? A. He didn't tell us. It might be an inference.

The Special Master: His answer couldn't possibly refer to O'Malley or Pendergast, because he said he did not know.

Q.54. Did someone make a motion that caused this entry to be made? In other words, the conferences which he has had were approved, and he was requested to proceed with those contemplated with power? A. I suppose someone did.

Q.55. Was it made substantially in those words? A. Oh, I wouldn't know.

Q.56. You wouldn't know? A. No.

Q.57. But when a record is made such as that, it is generally made as a result of a motion being put before the committee, is that right? A. I think that is usually the formality.

Q.58. What did you understand "with power," do you mean to conclude— A. (Interrupting) I meant just exactly what it said, "with power."

Q.59. Full power to act? A. That is what I meant.

Q.60. That is what you understood this minute to mean? A. Yes.

Q.61. That is what you understood the action of the committee to be at that time? A. That is about what I understood.

Q.62. If he thought best, to even conclude the litigation? A. That would be my own personal interpretation of it from my own viewpoint at that time. Now, what the other members of the committee thought, I don't know.

The Special Master: That is all he asked you, what you understood the result of that meeting to be.

A. That would have been entirely satisfactory to me.

Q.63. Now, I refer you to Defendants' Exhibit 18, a meeting of July 9, 1936. I am especially interested in the first paragraph. I believe you were present at that meeting. A. I don't know whether I was or not. I might have been fishing. Oh, yes, I was there, this part here (indicating).

Q.64. This first paragraph. Mr. Street was there? A. Yes, he was there.

Q.65. I notice this reads as follows: "The reports received from Attorney Folonie from time to time on the

progress of the settlement negotiations were presented in detail." By whom were they presented? A. I think it says there.

Q.66. "And his report of July 6th was read by the Chairman." A. I imagine Mr. Folonie was present.

Q.67. "Following which the Chairman explained some of the ramifications of this controversy and asked for the continued support of the committee in handling this matter." Were those reports of Mr. Folonie filed? A. I couldn't say.

Q.68. Were copies of them furnished to the members? A. No.

Q.69. "And the report of July 6th was read by the Chairman." That means that it was in writing, of course, Folonie's report? A. Yes, I would assume so.

Q.70. You haven't got it? A. No, I haven't.

Q.71. You wouldn't know how to furnish that report? A. No, I wouldn't.

Q.72. Of course, you knew of the settlement at the time it was made, or shortly thereafter? A. Well, I assume that I did. Yes.

Q.73. I mean in May of 1935? A. Yes.

Q.74. Then you knew of the rendition of the decree in February of 1936? A. Yes.

Q.75. You knew of the declaration of trust? A. Yes.

Q.76. You know how the money was allocated, 20, 30 and 50? A. Well, I recall it indistinctly. I wouldn't be positive about it now.

Q.77. And you know that disbursements out of the 30 per cent fund were to be approved by the committee through its secretary, Mr. Jackson? A. Jackson Parker.

The Special Master: No, I think that says that he could certify that the committee had approved it or two members could approve it.

A. Yes.

The Special Master: I do not think there is anything there that says that the secretary could approve anything.

Q.78. I didn't mean to so state. I meant that he would simply certify the action of the committee or two members could approve it? A. Yes.

Q.79. You did, in fact, thereafter act as one of the two members of the committee to approve certain disbursements, didn't you? A. I would imagine so, yes.

Q.80. Now, you knew that that 30 per cent was allocated for the payment of attorneys' fees and expenses in connection with the litigation? A. Yes.

Q.81. And you understood at that time that it was to take care of all of them, didn't you? A. Well, I wouldn't go as far as to say that. We hoped that it would.

Q.82. Well, you believed that it would and also believed that there would be a substantial return to the companies? A. Yes.

Q.83. Then in due course your company received what has been referred to sometimes as a dividend of 11 per cent out of this 30 per cent? A. Yes.

Q.84. That 11 per cent was approved by the committee, the disbursement of the 11 per cent? A. Undoubtedly.

Q.85. At that time you undertook to leave in there, of course, sufficient funds to take care of all expenses; you intended that, didn't you? A. Yes.

Q.86. You thought you had done it? A. Yes, sir.

Q.87. Because it is quite a task to gather up from all of these companies any assessments, isn't it? A. Yes, it is a task.

Q.88. It is a real genuine task? A. That is right.

Q.89. And you wanted to be absolutely sure that you left enough money in the 30 per cent to pay all expenses? A. That would be natural.

Q.90. That was the natural thing to do? A. Natural thing to do.

Q.91. When you got this 11 per cent, you were asked to return 5 per cent, weren't you? A. Well, I wasn't because I wasn't in the country at that time.

Q.92. Well, was your committee, I mean.

Mr. Berger: That was done at Hartford.

A. Springfield.

Q.93. At Springfield, and you were gone? A. I was gone, yes.

Q.94. Who was in charge of your office here in Chicago while you were gone? A. My associate, Mr. W. H. Lininger.

Q.95. Now, the committee, so far as you know, was never advised as to any reason for the required return of 5 per cent? A. I don't recall that they knew.

Q.96. You never had any knowledge as a committee member? A. No.

Q.97. And you were gone at the time of the receipt of the 11 per cent, and Mr. Street's personal request for the return of 5 per cent? A. That is right.

Q.98. That, I believe was made in about March of 1936?

Mr. Berger: Which?

Q.99. March 23, 1936? A. Yes.

Q.100. When had you left this country? A. I think it was the first few days of March.

Q.101. At the time you left, you had voted the dividend of 5 per cent, had you? A. Well, I don't recall whether I had or not.

Q.102. Sir? A. I don't recall without looking at records whether I did or not.

Q.103. Well, do you know whether or not the 6 per cent—then that was changed to 11 per cent, you know about that, don't you? A. I have seen the figures.

Q.104. You knew that a dividend had been authorized at the time you left this country in the early part of March, I believe you stated? A. Yes.

Q.105. When did you return to this country?

The Special Master: I do not understand his last answer, you asked him if he knew, and then you said "before you left"; that was in March, was it, and he said "yes." To what did he say "yes"?

A. Well, I wouldn't recollect the detail of that.

Q.106. Let me ask you this: before you left here, did you know that a dividend was—I call it—out of the 30 per cent had been authorized by the committee? A. Well, I don't recall it.

Q.107. You don't recall either way? A. No.

Q.108. When did you return to this country? A. I think it was the 31st of March.

Q.109. And the check, I believe, is dated March 23, 1936. Well, upon your return you did learn of that, didn't you? A. Yes, in due time I learned about it.

Q.110. You learned that you had received 11 per cent dividend? A. Probably.

Q.111. And you learned that Mr. Street had required or requested and had gotten a return of 5 per cent? A. Probably.

Q.112. Well, you did, didn't you? A. Well, I wouldn't be so—when it comes to fixing dates and things of that kind, I want to be as accurate as I can, but if I am not accurate about it, I don't want to say so.

Q.113. What was that 5 per cent for? What did you learn it was for? A. I didn't learn anything about it.

Q.114. Did you make inquiry? A. I did not.

Q.115. Was any part of it charged to your office here? A. It was all charged to our office.

Q.116. And you never inquired what the 5 per cent of your total impounded premiums returned to Mr. Street was for? A. Not when the president of the company charged it against my department I don't.

Q.117. You never even asked? A. I didn't even ask.

Q.118. Did you receive information as to what it was for? A. All the information I think is disclosed in that record that you have before you there.

Q.119. Did you run that record to see what you could ascertain about it? A. I think I looked it over, yes. That was largely an accounting proposition, with which I am not specially familiar. There was no occasion for me to familiarize myself with it.

Q.120. Where is there anything in the record that reflected to you the purposes for which the 5 per cent was sent back to Mr. Street? A. No, not that I recall.

Q.121. Sir? A. Not that I recall.

Q.122. Did you seek information from any other source? A. I did not.

Q.123. And have you to this day? A. I did not.

Q.124. And to this day you don't know the purpose for which Mr. Street required that 5 per cent? A. I do not.

Q.125. And you never made any inquiry to this day? A. I did not.

Q.126. Now, you have known ever since the early part of 1939 that it is generally charged that it was used for corrupt purposes in Missouri, haven't you? A. The press, yes. I have seen the articles.

Q.127. You never made any inquiry even then to find out whether or not any part of it— A. (Interrupting) No.

Q.128. Was that because you didn't want to know? A. The one who was most able to disclose the facts was no longer here.

Q.129. Well, you know A. L. McCormack is not dead, don't you? A. Well, I am not in contact with him.

Q.130. So far as you know, he made full and complete disclosure of the facts? A. Well, I was just judging only from newspaper accounts.

Q.131. You know the executor of Charles R. Street's estate, don't you? A. Said to be the bank over here, this City National Bank and Trust Company.

Q.132. Have you endeavored to find out from the executor of the Charles R. Street estate how that money

went out of Mr. Street's hands, if it went out? A. I never did.

Q.133. Or to whom it went? A. I never did.

Q.134. You have had no interest in it? A. Well, I had an interest in it, yes.

Q.135. How much did the 5 per cent returned to Mr. Street amount to for the company of which you had charge? A. Well, it is in there (indicating).

Q.136. Wasn't it $316,000.00, the total impounded premiums up to May 1, 1935? A. Well, whatever those figures disclose. I don't carry that in my mind.

Q.137. Five percent is $15,821.52? A. Yes.

Q.138. You say you were not much concerned—

The Special Master: He says he does not know. Do you want to prove those facts?

General Bullitt: We will agree to it. There isn't any question about it. The impounded premiums were $316,430.51.

The Special Master: The only point is, you asked this man and he says he does not know anything about it. So far as I am concerned, there is no proof about it. Take the—

Q.139. (By Senator Hollingsworth) Take the file and state into the record the total amount of the impounded premiums charged to the Western Department of the companies as of May 1, 1935. A. That is $316,430.51.

Q.140. And 5 per cent of that is what there? A. $15,821.52.

The Special Master: Have you learned that that amount was turned over to Mr. Street?

A. Had I learned?

The Special Master: Is it true that that amount was turned over to Mr. Street?

A. Yes, judging from my advice from my head office.

Q.141. I believe that you stated that you learned that shortly after your return in 1936? A. Yes.

Q.142. Which was the latter part of March, I believe? A. Well, I didn't get into that until along in April sometime.

(A document, handed to the reporter, was marked for identification as "Defendants' Exhibit 62, EFM.")

Q.143. Mr. B. E. Hobart is an auditor in your office in Chicago? A. Yes, sir.

Q.144. When you looked over this file where you got all of the information that you had, did you run across that letter of Mr. Hobart, or a copy of it, addressed to the president of your company in Springfield?

Mr. Berger: It is not addressed to anybody.

General Bullitt: It isn't addressed to anybody.

Senator Hollingsworth: Well, it is dated March 26th.

General Bullitt: It isn't addressed to anybody.

Senator Hollingsworth: I said addressed to the president. It is not addressed to anyone? Maybe not.

General Bullitt: Maybe not; it just isn't.

Senator Hollingsworth: I think possibly it isn't.

Mr. Berger: It is not addressed to anybody.

Senator Hollingsworth: Maybe it isn't.

The Special Master: Well, this purports to be an inter-office bulletin.

Senator Hollingsworth: I think that is correct.

Q.145. (By Senator Hollingsworth) Did you run across that file? A. I don't know. My initials are not on it. If it is a photostatic copy, if I had seen it, I would have probably had an initial on it.

General Bullitt: It is perfectly obvious what it is, Mr. Master.

Q.146. Do you recall where you were when you first learned there had been a 5 per cent return to Mr. Street? A. No, I don't. I think it was probably along the first half of April after I came back and cleaned the desk off.

Q.147. Did you find out then what it was for? A. No, I did not.

Q.148. And you never made any inquiry? A. No.

Q.149. You didn't know that it was even claimed that it was for attorneys' fees and expenses? A. No.

Q.150. Sir? A. No, sir.

Q.151. Well, did you learn that it was returned to Charles R. Street, Agent? A. Well, the correspondence indicated that it was.

Q.152. Did you undertake to think what it was for? A. I didn't pay very much attention to it, no.

Q.153. Did you undertake to figure out? A. No, I didn't try to delve into the mysteries of what the 5 per cent was.

The Special Master: How much was the amount involved?

Senator Hollingsworth: $15,821.52.

Q.154. Charged against your office here? A. That is right.

General Bullitt: To undertake to think, that is a serious proposition.

Senator Hollingsworth: This is a peculiar situation.

A. We are a department office. We are not a general agency. We are not running on our own power or working on commission business. We are just as much a department as we would if I were occupying a desk down at Springfield, Massachusetts. That is all.

Q.155. Do you have anything to do with the income tax returns of your company? A. No.

Q.156. Nothing? A. No.

Q.157. That is made entirely from the books and records in the home office? A. The home office, yes.

Q.158. Did income tax men come out and check your records here in Missouri on that? A. I don't recall that they did. Mr. Hobart is here. He could inform you on that.

Q.159. Do you recall that they interviewed you? A. They didn't interview me. I never had any contact with any of them.

(A letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 63, EFM.")

Q.160. I show you Defendants' Exhibit 63, which purports to be a letter from F. A. Schlesinger, treasurer out of the home office, I think, addressed to you under date of March 24, 1936. Was that letter brought to your attention? A. I don't see my initial on it. I wasn't there at the time, anyway. This is a memorandum from my associate, Mr. W. H. Lininger, who opened the head office mail when I wasn't present.

Q.161. Was it called to your attention? A. I think I saw this file after I came back, but there is nothing on it to indicate that I did, and I have no recollection of seeing it.

Q.162. Did you answer it? A. I didn't answer it.

Q.163. Is there, so far as the file shows? A. Well, there is the answer right there, I guess (indicating), March 26th, signed by B. E. Hobart.

Q.164. But it did come to your attention? A. I think so. I think the whole file was probably brought to my attention along in the middle of April when I came back.

Q.165. I notice this letter says, from your home office treasurer addressed to you: "Today we have received the following checks totalling $34,807.36 which according to our computation is just 11 per cent of our

total impoundings." Then follows the breakdown to Springfield, Sentinel, Michigan and New England. "The only thing that accompanied these checks was a memo as follows, written in longhand:

'Total Impounded Premium	$316,430.51
11 per cent checks herewith	34,807.36
5 per cent Impounded Premiums	15,821.52

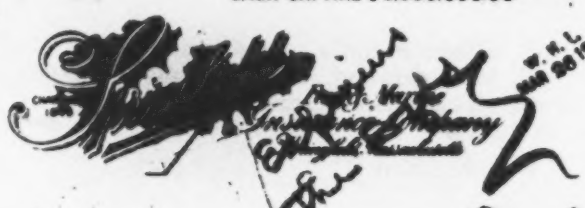
Check payable to C. R. Street, *Agent* to be sent here.' We charged the remittance to your contra account, and would suggest that you reimburse us with your check. According to our computations, the total bond so far received plus the enclosed remittances, less our check to Mr. Street for the 5 per cent, makes the net recovery in money—$167,612.91 or practically an even 53 per cent of our total impounded premiums. We understood there were some more bonds coming, but perhaps Mr. Haid's action in securing the enclosed checks will alter that plan. We would be interested in being advised regarding the transactions referred to herein at your convenience, and also enlightened as to what, if anything, may be expected in the future."

The Special Master: Is that letter in evidence?

Senator Hollingsworth: I am offering that letter now, which is Defendants' Exhibit 63.

(Which said Defendants' Exhibit 63, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

CASH CAPITAL $5,000,000.00



Springfield, Mass
March 24, 1936

Mr. John C. Harding, Vice President
Springfield Fire & Marine Insurance Company
228 West Adams Street
Chicago, Illinois

MISSOURI RATE CASE

Dear Sir:

Supplementing President Bulkley's conversation with your office yesterday, we are communicating with you regarding the latest developments in this case.

On Yesterday Mr. Bulkley received a telephone conversation from Mr. Main indicating that checks were in the mail to us for a payment in cash on account of our impounded premiums (11%), and requested that we forward him a remittance at once for 5% of the impounded premiums to apply on expenses.

We accordingly mailed our check payable to C. R. Street, Agent, for the 5% which amounted to $15,821.52 as you will note from copy of letter attached.

Today we have received the following checks totalling $34,807.36 which according to our computation is just 11% of our total impoundings:

Springfield	$29,040.25
Sentinel	2,270.88
Michigan	1,741.88
New England	1,784.40
	$34,807.36

The only thing that accompanied these checks was a memo as follows, written in longhand:

"Total Impounded Premium $316,430.81
11% checks herewith 34,807.36
5% Impounded Premiums 15,821.52
Check payable to C. R. Street, Agent to be sent

D63

Springfield Fire & Marine Insurance Company
of Springfield, Massachusetts

W. M. L.
MAR 26 1934

We charged the remittance to our contra account, and would suggest that you reimburse us with your check.

According to our computations, the total bonds so far received plus the enclosed remittances less our check to Mr. Street for the 5%, makes the net recovery in money - $167,612.91 or practically an even 85% of our total impounded premiums.

We understood there were some more bonds coming, but perhaps Mr. Haid's action in securing the enclosed checks, will alter that plan. We would be interested in being advised regarding the transactions relative to herein at your convenience, also enlightened as to what, if anything, may be expected in the future.

Yours very truly,

F. A. Saunders
Treasurer

FAS:MCH:1
Enc.

D-63

[redacted]

Senator Hollingsworth: I offer in evidence Defendants' Exhibit 62.

Q.166. That is a facsimile or that is a picture of Mr. Hobart's signature, isn't it? A. Undoubtedly.

Q.167. That went out of your office? A. Yes.

(Which said Defendants' Exhibit 62, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

THE SPRINGFIELD GROUP OF FIRE INSURANCE COMPANIES

SPRINGFIELD FIRE & MARINE INSURANCE COMPANY, Springfield, Massachusetts
CONSTITUTION DEPARTMENT, Springfield, Massachusetts
SENTINEL FIRE INSURANCE COMPANY, Springfield, Massachusetts
MICHIGAN FIRE & MARINE INSURANCE COMPANY, Detroit, Michigan
NEW ENGLAND FIRE INSURANCE COMPANY, Pittsfield, Massachusetts

GEORGE G. BULKLEY, President

HARDING & LININGER, Managers
CHICAGO, ILLINOIS

GEORGE G. BULKLEY, PRESIDENT
SPRINGFIELD, MASS.

March 26, 1936

ATTENTION

CONCERNING Missouri Rate Case

In accordance with your letter of March 24th, we enclose herewith our check $15.821.52, to reimburse you for check of the same amount that you sent to Mr. Haid.

The checks totalling $34,807.36 we are depositing today and will report in the monthly account as a credit to Missouri Impounded Premiums. As far as check for $15,821.52 is concerned we will advise you later after we get in touch with Mr. Street. Presumably it will be charged as a separate disbursement item with the caption "Expenses in connection with the Missouri Rate Case", in accordance with Mr. Williams' letter of February 21st. OK

Yours very truly,

B E Hobart

AUDITOR.

CF:
Encl.

962

Q.168. This was called to my attention as being inter-office correspondence. Did that come to you? A. It didn't come to me because I wasn't here, but all executives—

Q.169. (Interrupting) I want to know this: did that message go back to your home office? A. That went back to our head office.

Q.170. Did it go to the home office? A. I assume it did.

Mr. Berger: Mr. Hobart is here. He knows about it.

A. Undoubtedly it did. It says, "In answer to your letter of March 24th," which is also in evidence.

Q.171. I notice this letter says, "As far as check for $15,821.52 is concerned, we will advise you later, after we get in touch with Mr. Street." That was called to your attention that that was the status of this matter when you got back, wasn't it? A. Well, probably so, yes.

Q.172. Did you ever get in touch with Mr. Street? A. I did not.

Q.173. Did anyone out of your office as far as you know get in touch with Mr. Street? A. I couldn't say.

Q.174. Did you discuss with Mr. Hobart whether or not he had been in touch with Mr. Street? A. No, I did not. I assumed, as I would in any case of that kind, that the matter was finished business by the time I came back and the correspondence was turned over to me for information and comment if I cared to make any.

Q.175. You found when you got back a letter addressed to you. You found a reply to that letter from Mr. Hobart of the home office, in which he said that, "As far as the check for $15,821.52 is concerned, we will advise you later, after we get in touch with Mr. Street." Do you say you left that correspondence without making any inquiry whatever? A. I did, yes.

Q.176. You never even asked Mr. Hobart whether or not he had gotten in touch with Mr. Street? A. No.

Q.177. I believe you stated that you paid no attention to what the money was for? A. That is right.

Q.178. No interest or no concern of yours? A. Well, that is a question. I don't know that that is quite a fair question.

Q.179. Well, was it? A. I hadn't reached the point where I had to take it into account.

Q.180. That you had to take it into account? A. Yes.

Senator Hollingsworth: That is all.

Cross Examination by Mr. Bullitt.

XQ.181. Mr. Harding, where was the $15,821.52 check to C. R. Street, Agent, made? A. Made in Springfield, Mass.

XQ.182. Who directed that check to be made out, signed and delivered? A. I don't know.

XQ.183. Wasn't that done by the authority of the president of your company? A. It must have been, yes.

XQ.184. Did you or your office in Chicago have anything whatever to do with the issuance or delivery of it to Mr. Street? A. Nothing whatever.

XQ.185. If you had investigated or wanted to complain about that money being paid to Mr. Street, to whom would you have complained as your superior? A. To the president of the company.

XQ.186. The check was paid out of the president's office, was it, so far as you know? A. Yes, sir.

XQ.187. Do you recall Mr. Hollingsworth asking you about the minute which recited that Mr. Street could proceed with "those contemplated 'with power?'" You remember that? A. Yes.

XQ.188. Did you or any member of the committee, as far as you know, either by writing, by telegraph or telephone or personal communication ever at any time get word from any insurance company whatever, authorizing or telling you that you could bind them in this litigation or settling of it? A. No, sir.

XQ.189. When you gave that power to Mr. Street, according to the terms of those minutes, did you understand that Mr. Street was given power to bind the Glens Falls Insurance Company or any of these 135 insurance companies that are in this litigation to anything he chose to do? Was that your understanding that he could do what he pleased with them? A. Well, I suppose they would ultimately have a veto power.

General Bullitt: That is all I want to ask him.

The Special Master: Mr. Harding, if your home office had written out here and told you, here was an item of $15,000.00 expense that had been incurred in writing business in Massachusetts and they were charging it to your department, would you not have made a complaint to the president about that? A. I would not.

The Special Master: You would have just absorbed—

A. (Interrupting) Certainly.

The Special Master (continuing): —the cost of writing in Massachusetts, and let it show up on the record

out here of the western management? A. We know it would be reasonable.

The Special Master: You would not care to be heard as to whether it was reasonable or not?

A. No, our experience demonstrates that those things are always reasonable, everything that is charged up proportionally to this department. We have never found any occasion where we had a reason for complaint over a period of many, many years, going back to 1876.

The Special Master: No matter how it looked, it would make no difference to you?

A. It wouldn't make any difference to us.

XQ.190. (By General Bullitt) Isn't it a fact if the president of your company decides some way that expenses are charges to be made and allocated, you have to accept that? A. Why, certainly.

XQ.191. If you want to object to the way he runs the business— A. (Interrupting) We are free to object if we want to, and we sometimes do, if we think we have a better plan, but we don't discuss it at the moment. We wait until a more opportune time.

General Bullitt: That is all.

(Witness excused.)

BERNARD E. HOBART, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Mr. Hobart, have you been present here in this hearing and heard Mr. Harding testify? A. Yes, some of it, as I could hear it.

Mr. Berger: He couldn't hear everything Mr. Harding has said; it wasn't loud enough.

Q.2. Did you have anything to do with this matter in any way, prior to the time Mr. Harding left this country in the early part of March, 1936? A. Well, I handled all of the accounting on the impounding, you know.

Q.3. In regard, however, to the compromise and settlement under the compromise agreement, did you have anything to do with it? A. I had nothing to do with the compromise whatever.

Q.4. And no money had come to you prior to the time that Mr. Harding left here in the early part of March, 1936? A. Well, the first thing on the money was

the letter from the head office, that letter that you have there.

Q.5. That is addressed to Mr. J. H. Harding? A. Yes.

Q.6. And is Defendants' Exhibit 63, dated March 24, 1936? A. That is correct.

Q.7. In that letter you were asked for an explanation as to these checks and the check payable to C. R. Street, Agent, were you? Look down at the bottom part of it. A. Yes, this one here (indicating).

Q.8. You undertook to comply, as far as you could, with the request in that letter, and you wrote— A. (Interrupting) I wrote that letter.

Q.9. (Continuing) —on March 26th, which is Defendants' Exhibit 62? A. Correct.

Q.10. I notice that you say this, "As far as check for $15,821.52 is concerned, we will advise you later after we get in touch with Mr. Street." You didn't know anything about what it was for, did you? A. No.

Q.11. Did you make any effort at the time you wrote this letter to find out what it was about? A. We didn't get hold of Mr. Street; I am positive of that.

Q.12. That is, at the time you wrote the letter? A. Yes.

Q.13. After you wrote the letter, did you get hold of Mr. Street? A. I did not.

Q.14. Did you make an effort to? A. We made an effort and he was out of town, and—

Q.15. (Interrupting) Who is "we"? A. Mr. Lininger and myself.

Q.16. Where is Mr. Lininger? A. I think he is in Norway just now.

Q.17. In where? A. In Norway. It was simply a question of whether this thing was to be charged as an expense or whether it was an advance of some kind or—there were so many charges and expenses going through that we didn't know what it was all about.

Q.18. All right. Did you ever get in touch with Mr. Street? A. I did not.

Q.19. Did Mr. Lininger, to your knowledge, get in touch with Mr. Street? A. I don't think he did.

Q.20. So far as you know, the home office was never advised about that item? A. Well, they were advised by charging it through the account, you know. We charged it as expenses. That was the question involved, whether it should be charged in our accounting to the

home office as expense or carried as an asset for a while until we decided or knew what the money was for. It might be an advance to a lawyer or something.

Q.21. But you never complied with your promise to get in touch with Mr. Street and then advise the company? A. No. I never did.

Q.22. And the matter was entirely dropped except that you made some entries on your books and those entries went to the company? A. Yes. I exercised—

Q.23. (Interrupting) And to this date, that is a mystery to you what it is for? A. I didn't know a thing about it.

Q.24. And is still a mystery? A. Absolutely.

Q.25. Has there ever been any discussion in your office between you and Mr. Lininger or between you and Mr. Harding about what this article was for? A. No, there hasn't.

Q.26. You considered it a most unusual item? A. I considered it unusual, but then so many expenses in Missouri were charged through the audit bureau or the inspection bureau, ordered as a direct assessment. Here is another new way of raising money, and it got to be natural. That is really the way I looked at it at the time.

Q.27. You never took it up with Mr. Harding? A. No, I didn't. He was out of the country.

Q.28. Well, he came back, though, within a week or ten days after the check was received?

Mr. Berger: The check was never received.

A. Well, he came back after that.

Q.29. After the letter was received? A. Yes.

Q.30. You never asked him about it? A. No.

Q.31. When did Mr. Street get back from wherever he was gone? A. Mr. Street?

Q.32. Yes, you said he was gone. A. Oh, I don't know. We called the office and he was out of town. I remember that.

Q.33. When did you call him? A. Oh, it was around that time.

Q.34. Before you wrote the letter? A. Probably, yes.

Q.35. Did you call the office, Mr. Street's office after you wrote the letter? A. Probably we did.

Q.36. How many times did you call? A. Oh, once or twice; that is all. He was out of town, and then later on we determined that it was another Missouri expense, and just threw—

Q.37. (Interrupting) Who is "we," you and Mr. Lininger? A. Yes.

Q.38. What discussion did you have about it? A. We had very little.

Q.39. Well, you had been asked by the home office to find out about it, hadn't you? A. Well, for some reason it was thrown in the expense.

Q.40. I know, but what was the reason? A. I don't recall it now.

Q.41. Did Mr. Lininger tell you to throw it into expense? A. I don't know.

Q.42. Did Mr. Lininger claim that he knew anything about it? A. No. All he knew about it was a long distance call from our head office.

Q.43. All right. Who called him? A. Either the president or the treasurer.

Q.44. And he reported to you that conversation? A. Right away, and all that they were interested in was that we would advise them immediately if the figures were not right. He quoted the figures over the telephone. I remember that very distinctly. That is all the interest that we had.

Q.45. The figures? A. The $15,000.00 and the $34,000.00. They asked us to confirm it over the phone.

Q.46. But after you got Mr. Schlesinger's letter of March 24, 1936, and you answered it, did you have any subsequent telephone conversations? A. I don't think so.

Q.47. But you did ask Mr. Lininger? A. Yes.

Q.48. And Mr. Lininger didn't have any information? A. I don't think he did.

Q.49. It was still a mystery? A. Yes.

Q.50. Now, who undertook to solve the mystery by putting it as an expense item? A. I probably used my discretion. I have got a bit of authority from the company and if they had kicked, they would probably have written to me in connection with the department accounts.

Q.51. All right. When you came to that decision, did you write the company as to your decision? A. No, just put it in the account.

Q.52. Just put it into the account? A. Yes.

Q.53. And decided to let the company find out as best it might what it was for? A. Yes.

Q.54. That is true, is it? A. That is true. I never got an answer from them so it was satisfactory to them.

Q.55. You told them you would advise them later. A. Well, we may have advised over the phone or something, that it was expense.

Q.56. Well, did you? A. I don't know. I don't recall.

Q.57. How did you advise over the phone when you didn't know what it was about? A. I say we might have advised later on, you see.

Senator Hollingsworth: That is all.

Cross Examination by General Bullitt.

XQ.58. Mr. Hobart, did you or Mr. Lininger or anybody in the Chicago office have anything whatever to do with the payment of this money to Mr. Street? A. None whatever.

XQ.59. It was the home office that paid the money to Mr. Street, wasn't it? A. The home office paid it.

XQ.60. And the home office knew, if anybody knew, what it was being paid for? A. That is the only thing that I could say.

XQ.61. And isn't it a fact that the only thing that you had to do with it was as a mere auditor or accounting agency, to charge this matter up and you reimburse the home office to the proper accounting account; is that all it is? A. That is it exactly.

XQ.62. The home office took the responsibility of paying the money out? A. If the treasurer of the company asks us to reimburse him for a certain expense, it is not for me to criticize him.

XQ.63. And isn't it a fact that at page 949 of your own check register that precise $15,821.52 check that you reimbursed the home office was charged to expense on Missouri impounded premiums? A. Yes, sir.

XQ.64. That is correct, isn't it? A. Yes.

Mr. Berger: And also carried on to—

A. (Interrupting) To the ledger.

Mr. Berger: As expense to the ledger?

A. Yes.

Mr. Berger: As expense in Missouri impounded premiums?

A. From there to the department accounts.

XQ.65. (By General Bullitt) That was all shown when you returned it to the home office at the end of each month? A. That is right.

XQ.66. The home office was advised of the particular account for the reimbursement that they asked

you for, for reimbursement to the home office? A. Made on the home office; it is a suspense item.

XQ.67. Is it customary or not in the management of your particular insurance company to carry considerable sums from time to time in a suspense item open? A. Yes.

XQ.68. Explain that. A. If we, for instance, pay a loss on a policy that was originally written in the east, we put that in the suspense account and let the home office reimburse them. That is in order to keep your cost statistics of each department separate. It is very common practice among insurance companies.

XQ.69. And is the sum of $15,000.00 an unreasonably large sum to be carried in those kinds of expense accounts? A. Nothing unusual at all.

XQ.70. How often in the course of a year will you have these various suspense items carried? A. Well, there might be six to ten a month for all kinds of purposes.

General Bullitt: That is all.

Senator Hollingsworth: It is so unusual the company asked you to find out what it was about, didn't they? A. No.

Senator Hollingsworth: All right.

General Bullitt: The company was supposed to know what it was about when they paid the money out?

A. Not only that, the information probably was given me by somebody that it was Missouri expense. It may have been Mr. Lininger, Mr. Harding or the Actuarial Bureau. I am just trying to get my memory back.

General Bullitt: That is all.

The Special Master: At the time, it was a question of getting it on the books?

A. It is getting it on the books. It was a question whether to carry it for a while as an asset or to charge it out as expense. It was just an accounting proposition.

(Witness excused.)

W. L. LERCH, having been produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. Mr. Lerch, I believe you are manager of the Underwriters Grain Association? A. Yes, sir.

Q.2. At this time? A. Yes, sir.

Q.3. And were you in the years 1935 and 1936? A. Yes, sir.

The Special Master: Was there any such a company as that in the 137 companies?

Mr. Berger: No. If I might make this statement for the record, if your Honor please, the Underwriters Grain Association is not an insurance company. They are more of an agency that writes a policy which is participated in by many stock companies percentage-wise, varying percentages. For the sake of impounding, instead of having to break it all up into the various federal court companies, the three-judge court permitted a separate impounding account in the federal court for the Underwriters Grain Association, of that portion of their writings represented by companies who had the federal court cases.

The Special Master: Who did have federal court cases?

Mr. Berger: The balance of the premium representing those companies that are state court cases, an impounding was made at Jefferson City. When the settlement was made, and the final decree, you will notice that the Underwriters Grain Association is referred to because we had this account on the custodian's books that had to be cleared.

The Special Master: How did it get in there? How did it get in? These companies all brought suit, and each one of these companies had premiums, and sixteen and two-thirds percent had been impounded.

Mr. Berger: But these particular premiums that are impounded by the Underwriters Grain Association were collected and impounded through the Underwriters Grain Association.

Judge Henson: It goes on the books—

Mr. Berger: The Underwriters Grain Association writes a certificate of insurance only on grain in storage.

The Special Master: Oh, I see. It is one of those pool arrangements?

Mr. Berger: Yes, instead of having to break it all down.

The Special Master: Like the oil group?

Mr. Berger: The reason why they are is because when the final decree was made, 50 per cent of the Underwriters Grain Association's impoundings were returned, just the same as if it were a company, and they participated in the 5 per cent fund.

The Special Master: It may not amount to anything, but I just do not like to be mystified.

Mr. Berger: They represent the companies that already have suits filed. It is purely for a matter of convenience for impounding.

Q.4. (By Judge Henson) Mr. Lerch, you have heard Mr. Berger's statement about how it came about that the Underwriters Grain impounded sixteen and two-thirds percent, just now made, have you? A. That is correct, yes, sir.

The Special Master: In other words, it is impounded on a certain group of policies, rather than by a certain company, due to this grouping?

Q.5. That is true, is it? A. That is correct.

The Special Master: All right.

Q.6. Now then, do you recall what the total impoundment was of the Underwriters Grain Association?

Mr. Berger: You mean to May 1, 1935?

Judge Henson: Yes, sir, up to May 1, 1935.

Q.7. Would that refresh your memory (indicating)? I will have it identified in a minute, or have you some documents with you that you can tell us? A. Well, it was something over $41,000.00, between $41,000.00 and $41,500.00.

Mr. Berger: That is the figure.

Judge Henson: All right, so I won't have to put that in.

Mr. Berger: It is $41,419.67.

A. That is correct.

Judge Henson: That is agreed.

The Special Master: Is that agreed?

A. That is correct.

Mr. Berger: And 5 per cent of that is $2,070.98.

Judge Henson: That is correct. This is only a caption sheet of the grand jury. I didn't want to—

The Special Master: It is all right. He has stated that is right. Let's go on.

Q.8. (By Judge Henson) Mr. Lerch, I will ask you if it is a fact that in March, 1936, you received substantially or received exactly 11 per cent of the amount of your impoundment to May 1, 1935? A. That is correct.

Q.9. And from whom did you receive that? A. I received that from the hands of Mr. Street.

Q.10. Did Mr. Street write you any letter about it? A. He did not.

Q.11. How did you get the check? A. He called me on the phone and asked me if I would stop in at his office on my way home or downtown the next morning.

Q.12. What was the 11 per cent? You may put it in the record, if you please. A. $4,556.16.

Q.13. Did you call and get the check? A. I did.

Q.14. In the telephone conversation he had, did he ask you to return 5 per cent of that? A. He didn't tell me what he wished to see me about at all in the telephone conversation. He just asked me to call in.

Q.15. And when you called in, was he there? A. He was.

Q.16. And state whether or not he gave you this check for 11 per cent of your premiums? A. He gave me the check for $4,556.16.

Q.17. State whether or not he asked you to give him a check for 5 per cent of your impoundments at that date? A. He did.

Q.18. What explanation did he give you about that? A. He said that he required that on account of litigation expense, Missouri litigation expenses.

Q.19. On litigation expenses? A. Yes, sir.

Q.20. Is that all he told you about it? A. That is all he told me.

Q.21. Did you ask him anything further about it? A. I did not.

Q.22. He asked you for that 5 per cent in the same conversation in which he delivered the 11 per cent? A. He did.

Q.23. You knew at that time that the federal court had entered its decree of February 1, 1936? A. Yes.

Q.24. And you knew that 30 per cent of your total impoundment had been set apart to Street and Folonie to pay expenses? A. Yes, sir.

Q.25. Did it excite your curiosity any that he was calling on you for a 5 per cent check when you had just received 11 per cent out of this 30 per cent? A. No, it did not, for the reason that we hadn't received our 50 per cent. We had received part of it. I didn't know whether he had received the 30 per cent. I didn't know what their expenses were.

Q.26. State your understanding of what the 30 per cent was for. A. I understood it was set apart for the payment of legal expenses.

Q.27. And what to be done with the balance, if any, if there should be any remaining of the 30 per cent? A. That was to be returned to the companies.

Q.28. So when you got 11 per cent, I suppose Mr. Street assured you that that much would not be required for expenses? A. He didn't give me any assurance at all. He simply said, "I want you to give me your check for $2,070.98, on account of litigation expenses."

Q.29. Did you ask him for any particulars of the litigation expenses? A. I did not.

Q.30. You knew what the terms of the decree were, didn't you? A. Yes.

Q.31. You knew the trust agreement that was given to the court with it by Street and Folonie? A. I didn't know the details of the various arrangements. I simply knew this, that Mr. Street was in charge of the litigation in Missouri.

(A check, handed to the reporter, was marked for identification as "Defendants' Exhibit 64, EFM.")

Q.32. The 11 per cent check was a Street and Folonie Trustees' check, wasn't it? A. Yes.

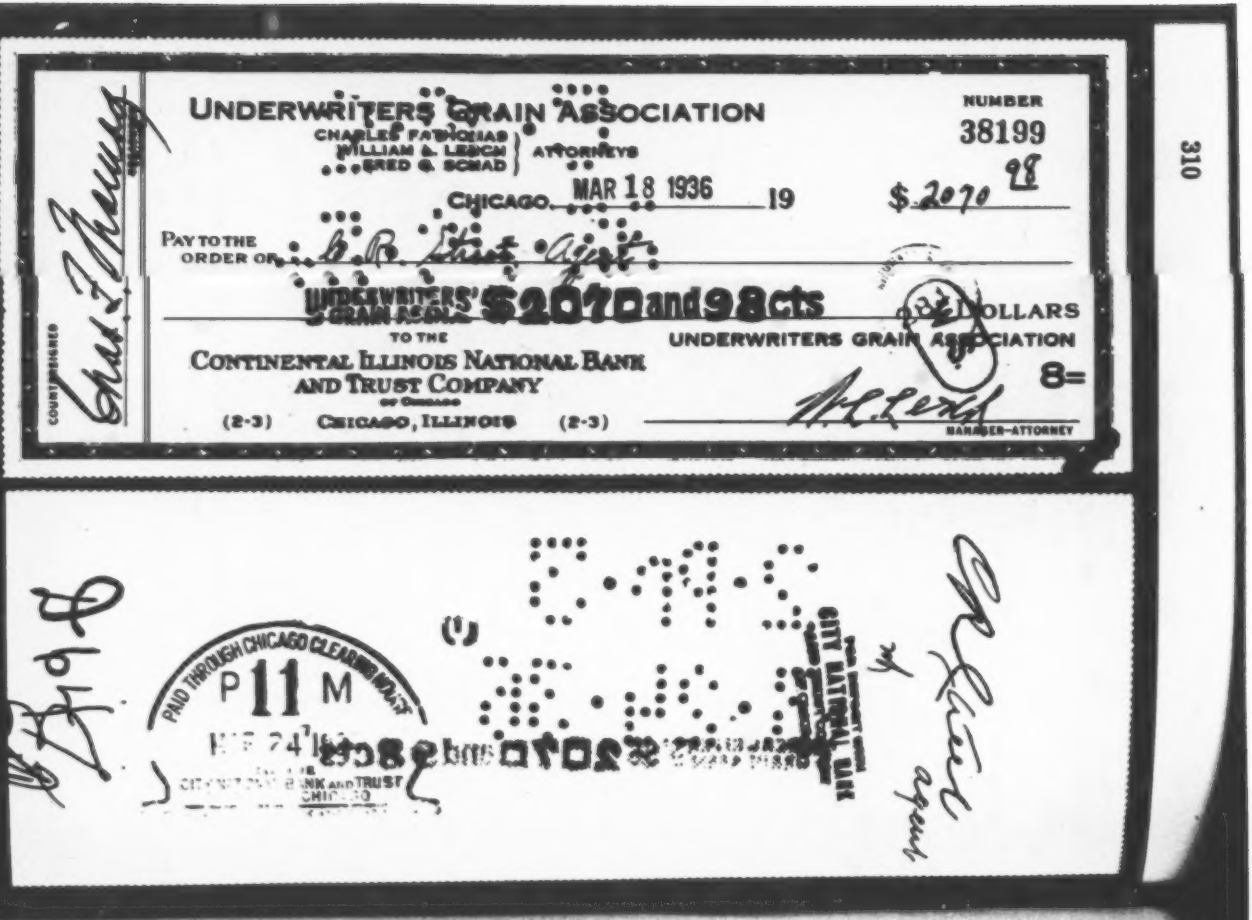
Q.33. Written by them, Street and Folonie, as Trustees? A. Yes.

Q.34. The check you gave back to him—I will show you Exhibit 64 and ask you if that is a photostat of the check with the endorsements on it—the check you gave to Mr. Street as he had requested? A. It is.

Q.35. That is a true photostat of the check and the endorsements? A. It is.

Judge Henson: I offer this Exhibit 64 in evidence, Mr. Berger and General Bullitt.

(Which said Defendants' Exhibit 64, so offered in evidence, having been previously duly marked, is in words and figures as follows:)



UNDERWRITERS GRAIN ASSOCIATION

CHARLES FABIOCHAB
WILLIAM A. LEECH
FRED G. SCHAD
ATTORNEYS

NUMBER 38199

CHICAGO. MAR 18 1936 19

$ 2070 98

PAY TO THE ORDER OF H. R. Strickland Agent

UNDERWRITERS' GRAIN ASSOC. $2070 and 98 cts DOLLARS

TO THE CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO

(2-3) CHICAGO, ILLINOIS (2-3)

UNDERWRITERS GRAIN ASSOCIATION

8=

COUNTERSIGNED

MANAGER-ATTORNEY

PAID THROUGH CHICAGO CLEARING HOUSE

P 11 M

MAR 24 1936

CITY NATIONAL BANK AND TRUST CHICAGO

CITY NATIONAL BANK

H. R. Strickland agent

310

(A photostatic copy of a letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 65, EFM.")

Q.36. I now show you Exhibit 65, and ask you whether that is a letter you received from Mr. Street. A. That is a copy of it, yes, sir.

Q.37. It is a photostatic copy of the letter, isn't it? A. When I delivered the check, I asked him to send me a receipt so that we would have it in our files.

Q.38. That is what he sent in response? A. Yes, sir.

Q.39. This is the only receipt you received? A. That is all.

Judge Henson: I offer in evidence Exhibit 65.

The Special Master: What is that Exhibit 65?

Judge Henson: Purely an acknowledgment or receipt.

Mr. Berger: That is Mr. Street's receipt.

Judge Henson: Yes, sir.

The Special Master: He calls it "expense."

Judge Henson: Yes, sir.

(Which said Defendants' Exhibit 65, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

312

WESTERN DEPARTMENT
310 SOUTH MICHIGAN AVENUE
POST OFFICE BOX 758
CHICAGO

Great American Insurance Company New York

C.R. STREET
Vice President
H.D. GREGORY
Secretary

CHICAGO March 19, 1936.

Mr. W. L. Lorch, Manager,
Underwriters' Grain Association,
2060 Insurance Exchange,
Chicago, Ill.

Dear Sir:

I acknowledge receipt of your check for $2070.98 advance on the expenses in the Missouri rate litigation.

Yours very truly,

C R Street

Q.40. Mr. Lerch, you say Mr. Street didn't tell you anything about the particulars of what the expenses were? A. No.

Q.41. And he hasn't done so in the letter? A. No, sir.

Q.42. Have you ever found out what they were for? A. Never have, no, sir.

Q.43. Have you ever asked him? A. I never did.

Q.44. You say that you never asked him? A. I never did.

Q.45. And the Street we have been talking about is Charles R. Street, Chairman of the Subscribers' Actuarial Committee? A. Yes, sir.

Q.46. That is the man you mean? A. That is the man, yes, sir.

Judge Henson: That is all.

Cross Examination by Mr. Bullitt.

XQ.47. Did you at one time work for Mr. Street in any way? A. Yes.

XQ.48. When was that? A. I was still with the Great American when he was appointed vice-president.

XQ.49. How long did you continue in the Great American under Mr. Street as vice-president? A. I was there until August, 1926.

XQ.50. How many years was that? A. That was about a year and a half after he came in.

General Bullitt: That is all.

Re-Direct Examination by Judge Henson.

RDQ.51. Didn't you ask him more particularly about what these expenses were? A. You didn't know Mr. Street.

RDQ.52. No, I didn't. You did. A. I knew him.

RDQ.53. What kind of a fellow was he? A. Well, in the first place, I regarded him as a strictly honorable and honest man, and in the second place, he wasn't a man inclined to give any information or to make any explanation of anything he did.

RDQ.54. You knew that at the time you were dealing with him? A. Oh, yes, I knew it.

RDQ.55. Then you were afraid to ask him anything about it? A. I wasn't afraid to, but I knew it would be useless.

The Special Master: What about him asking for money and refusing to give any explanation that inspired

your confidence to such a high degree? I don't understand.

A. He didn't refuse to give any information. Only if I had asked him, I think he would have said, "I am in charge of this affair, and this is money that is needed for the litigation in Missouri."

The Special Master: Yes, but you were in charge of the money, and you were representing other interests in the East. What was there about the fact he would not give any explanation that made you so confident that it was all right to pay it out?

A. Because I had known him for 30 or 35 years, and I had never known him to do anything that was dishonest or dishonorable, and his general reputation bore out my opinion of him.

The Special Master: No, you did not know what he was doing, because he would not tell you, according to your story.

A. I don't know that he wouldn't have told me if I had asked him, but I didn't ask him because I knew he was in charge of this litigation.

RDQ.56. (By Judge Henson) Then, if I understand you, you were willing to let him take that and do what he pleased with it? A. I was willing to let him take that, because I thought it was needed in connection with the litigation.

RDQ.57. I notice you made the check to Charles R. Street, Agent. A. Yes.

RDQ.58. You didn't make it to Street and Folonie, Agents? A. No. He asked to have it made that way.

RDQ.59. Did he ask you not to make it to Folonie and Street as trustees? A. He just asked me to have it made to C. R. Street, Agent.

RDQ.60. Whose agent was he? A. Well, he was the agent of the companies generally in this litigation, I take it.

RDQ.61. Was he the agent of your group here, the Underwriters Grain? A. I think they were all interested in it, yes.

RDQ.62. You interpreted that check that you gave to C. R. Street, Agent, as authorizing him as agent for your group to do what he pleased with it? A. Yes, sir.

Judge Henson: That is all.

(Witness excused.)

JOHN R. CASHEL, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. John R. Cashel.

Q.2. Where do you reside, Mr. Cashel? A. Evanston, Illinois.

Q.3. What is your connection with the Providence Washington Insurance Company? A. Western Manager.

Q.4. That apparently is not a member of the group or fleet of companies? A. No.

Q.5. Were you western manager in 1935 and 1936? A. I was.

Q.6. Of course, you were familiar with the Missouri rate litigation? A. Yes.

Q.7. You knew it was being handled through the Actuarial Committee? A. I did.

Q.8. For your company and other companies? A. For our company.

Q.9. You learned of the compromise that was made? A. Yes.

Q.10. In May of 1935? A. Yes.

Q.11. You knew after that that the federal court entered a decree? A. Yes, sir.

Q.12. And you knew after that that Folonie and Street executed a trust agreement in regard to these funds in the hands of the custodian? A. I understood that they were trustees of a portion of the fund.

Q.12½. You knew how that fund was broken up, 20 per cent to the policyholders? A. Yes.

Q.13. And 30 per cent for the payment of expenses? A. Yes.

Q.14. And 50 per cent outright to the company? A. Yes, sir.

Q.15. Did you have any knowledge of $100,000.00 fund being raised about the time this compromise was entered into? A. No, sir.

Q.16. When did you first hear of that? A. I didn't hear anything about it until—

Q.17. The story broke in the press? A. Yes.

Q.18. About the improper use of this money? A. That is right, yes, sir.

Q.19. Where is the home office of your company? A. Providence, Rhode Island.

Q.20. Did you receive here, or was there received at your office in Providence the 11 per cent dividend in

the early part of 1936, I believe it was? A. It was not received in the Western Department office, and I have knowledge of any dividend was received by our company.

Q.21. Did you receive any information from the company that there had been such a dividend? A. No, sir.

Q.22. Was your department credited with it? A. It wasn't credited in any specific amount. If it was credited, it would be credited just in general expense.

Q.23. Did you have any information about Mr. Street at that time requesting the company to return to him 5 per cent? A. No, sir.

Q.24. Did you have anything to do with that transaction whatever? A. No, sir.

Q.25. Was your department here charged with it? A. No, sir.

Q.26. You have no separate set of books here for your Western Department? A. Oh, yes, we have a separate set of books.

Q.27. Well, the litigation was on your books in your Western Department? A. As a disbursement account.

Q.28. As a disbursement? A. The amount of impoundings was on our books as a disbursement account.

Q.29. When the 11 per cent payment came in, was that put on your books? A. No, sir.

Q.30. When you disbursed any money on this account, was that put on your books? A. The only disbursements we made were the impoundings against the amount of impoundings to the custodian, and that disbursement, when it was made up, was the total amount of those impoundings.

Q.31. When the check went to Mr. Street for 5 per cent, when it did, as you know from this file from your home office, under date of March 21, 1936, your department was charged with that, was it? A. It was not charged on our books. There is nothing on our books.

Q.32. Nothing on your books? A. No, sir.

Q.33. You had nothing whatever to do with it? A. Nothing whatever.

Q.34. And no information was given to you? A. No information was given me, and I had no knowledge of it.

Q.35. You didn't even know that it had been paid out? A. No, sir.

Senator Hollingsworth: That is all.

Mr. Berger: As a matter of fact, when the case was settled, the impounding account was transferred?

A. Transferred to the home office.

Mr. Berger: And everything was handled at the home office?

A. Yes, sir.

The Special Master: They took it over from then on?

A. Yes, along about the latter part of 1936, if my memory is correct.

The Special Master: All right.

(Witness excused.)

The Special Master: Adjourn to nine o'clock.

Whereupon, the further taking of testimony in said case was adjourned until nine o'clock a. m. of Saturday, July 29, 1939.

MORNING SESSION, SATURDAY, JULY 29, 1939.

Pursuant to adjournment as aforesaid, at nine o'clock a. m., of said Saturday, July 29, 1939, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

CARSTEN CLAUSSEN, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Where do you live, Mr. Claussen? A. In Chicago.

Q.2. And you are connected with the London and Lancashire Insurance Company group? A. Yes, sir.

Q.3. What is your connection with that group? A. Manager of the Western Department.

Q.4. And were you manager in the years of 1935 and 1936? A. I was.

Q.5. That group, insofar as the Missouri rate litigation was concerned, consisted of The Law Union and Rock Insurance Company, London and Lancashire, Orient and Safeguard Insurance Companies? A. That is correct.

Q.6. And you were manager of the Western Department for each and all of those companies during that period? A. I was.

The Special Master: Are they all British companies or not?

A. No, they are not. The Safeguard is of New York and the Orient of Connecticut.

The Special Master: They came in as British companies and then set up their subsidiaries after they established business in the United States?

A. No. They were independent companies that were later purchased by the London and Lancashire.

Mr. Berger: The Law Union and Rock and the London and Lancashire are British companies?

A. Yes.

The Special Master: I knew they were.

Q.7. (By Senator Hollingsworth) Now, Mr. Claussen, were you familiar with the fact that a compromise of this litigation was effected in the month of May of 1935? A. Did you say am I?

Q.8. Did you become acquainted with that fact about the time it happened that a compromise was effected? A. Well, I don't know just what you mean by that, but I am aware that a compromise was effected.

Q.9. And you learned that at about the time it occurred, did you? A. I think so, yes, sir.

Q.10. Were you familiar in a general way with the terms and provisions of that compromise? A. I was.

Q.11. You knew that under the compromise agreement 20 per cent of the impounded premiums was to go to the policyholders, did you? A. I did.

Q.12. And that 50 per cent thereof was to go to the companies as their property? A. I did.

Q.13. And that 30 per cent was allocated first for the payment of expenses of litigation, attorneys' fees, and the remainder of that fund, if any, was to go back to the companies? A. I so understand.

The Special Master: It seems, as far as I can get it, that this distinction between the 50 and 30 per cent was on the theory that the parties all felt that 50 per cent could be paid out right away.

Senator Hollingsworth: Safely.

The Special Master: Of course, the 50 and 30 was all finally to go to the companies less whatever they had to pay out to pay off all of the expenses of both sides of the litigation.

Senator Hollingsworth: That is my understanding.

The Special Master: That is about the way it was worked out.

Senator Hollingsworth: It was just broken down on the theory that 50 per cent could be returned safely at that time?

Mr. Berger: Well, I don't think that was just exactly the fact.

The Special Master: That is the way it worked out.

Mr. Berger: That is the way it worked out.

The Special Master: That was the effect of it.

Mr. Berger: They originally intended, as the rate order shows, that 80 per cent should go back. In other words, the Superintendent approved four-fifths of the settlement, which made 80 per cent to go back to the companies.

The Special Master: Yes.

Mr. Berger: Then the question developed of having ready cash with which to pay expenses and assume the obligations, paying the Superintendent of Insurance and reimbursing the State of Missouri, which was an aggregate of about $900,000.00, so then in reducing to writing the settlement agreement it then was developed that the quickest way to have the available cash for the companies to pay these obligations was to have a percent go to the trustees, rather than to the companies, and it was finally agreed upon 30.

The Special Master: That is what I said. They felt sure that 50 per cent could be released immediately without any embarrassment.

Mr. Berger: We just approached it from the other angle, was all. If that makes any difference I don't know.

Q.14. (By Senator Hollingsworth) Mr. Claussen, at about the time that this compromise agreement was made did you receive any information of any kind about a fund of $100,000.00 being raised by some insurance companies for the payment of attorneys' fees in connection with this litigation? A. No, sir.

Q.15. Have you heard of that fact since that time? A. No, sir.

Q.16. Is this the first time you ever heard of that? A. Of a fund of $100,000.00 being raised?

Q.17. $100,500.00 being raised? A. I never heard of it.

Q.18. And paid, I think, through Mr. Street to Messrs. Hicks and Folonie? A. I never heard of it.

Q.19. You never heard of that even to this date? A. No, sir.

Q.20. After this settlement did you receive from the Custodian any part of the 50 per cent that was to be paid by the Custodian to the policyholders? A. Yes, sir, we received all of that, or practically all of it.

Q.21. Practically all of it? A. I think there were a few dollars discrepancy in either one or two of our companies, but just a few dollars.

Q.22. And then after that did you receive any money from the trustees, Folonie and Street? A. I did—from Mr. Street?

Q.23. Well, you received it from the trustees, did you not, that is, the check was made by the trustees? A. Yes, sir.

Q.24. Was that check delivered to you by Mr. Street? A. It was, in person.

Q.25. Here in Chicago? A. In Chicago.

Q.26. Do you recall that that was in March of 1936? A. I would say that was the approximate date, the approximate time rather.

Q.27. Did Mr. Street call at your office to deliver that check? A. He did.

Q.28. And delivered it to you in person? A. He did.

Q.29. At that time did he have a conversation with you about the matter? A. He did.

Q.30. Who was present? A. Mr. Street and myself.

Q.31. What conversation did you have? A. Mr. Street asked me or rather Mr. Street told me that he had in his possession checks which aggregated 11 per cent of the amount of our impounded premiums which he was prepared to turn over to me if I, in turn, would deliver him checks aggregating 5 per cent of our impounded premiums. I then asked Mr. Street why the transaction should be handled in that manner, if we were to receive 6 per cent net, why he didn't just hand me a check for the 6 per cent instead of making a double transaction. Mr. Street then told me that the reason that they were handling it under the method of two checks was to simplify their bookkeeping and to keep their records uniform. I then asked Mr. Street what this 5 per cent was to be used for, the check that I gave him, and he told me that that is something that he couldn't tell me just then. I said to Mr. Street that a check from each of our companies for 5 per cent of our impounded premiums was rather an unusual request and that I as manager of the company should have some information as to what that money was to be used for, that I had no authority to give out money just because someone wanted it. I should have some explanation of the payment to give to my head office officials if they

asked for it. "Well," he said, "I am sorry, Mr. Claussen, but I can't tell you that just now," but then he reached down in his pocket and he pulled out an envelope and he said, "I have called on all of these managers in New York and I have their checks here. Now, if you want to see them, here they are." I said, "No, Mr. Street, if you will tell me that you have those checks, that is all the information I need and I will take your word for it." Then I asked Mr. Street further, "Well, tell me this, is this money to be used in the settlement of this case, possibly to buy a judge or someone," and Mr. Street answered, "Mr. Claussen, I can answer that question with a positive no. These funds are to be used for legitimate purposes only," and with that I called for our accountant. I asked him to check over the figures that Mr. Street handed me for the amount of money that he wanted, asked him to check it over and to see if that amounted to approximately 5 per cent of our impounded premiums and he came back with the word that it did, and I then asked him to have the checks drawn and bring them back to me, which he also did. I handed the checks to Mr. Street. Mr. Street bid me good day and that was all that took place at that transaction.

Q.32. At the time he came to you with that 11 per cent check for each one of your companies, he told you that he could deliver that check to you provided you would in turn deliver him— A. (Interrupting) He didn't tell me that; he said that if I gave him checks for 5 per cent he would give me the checks for the 11 per cent.

Q.33. 11 per cent? A. Yes, there was no proviso in it; he just—

Q.34. He simply said if you would give him a check for 5 per cent, he would give you a check for 11 per cent? A. Yes.

Q.35. Of course, that struck you as a strange way to transact business? A. It did that.

The Special Master: I think he has made that very clear that it did.

Senator Hollingsworth: I think so too.

Q.36. (By Senator Hollingsworth) At the time that you gave him the 5 per cent check he refused to tell you the purpose for which it was to be used? A. He didn't tell me. He made the statement exactly as I told it to you.

The Special Master: He said he couldn't tell you at that time?

A. He said he couldn't tell me at that time.

(Photostatic copies of checks, handed to the reporter, were marked for identification as "Defendants' Exhibits 66 to 69, both inclusive, EFM.")

The Special Master: Mr. Hollingsworth, up to this time I have allowed you to ask leading questions more or less, but with this witness there is no occasion for any leading questions and I shall expect you to treat him as your own witness.

Senator Hollingsworth: I agree that that rule is eminently proper in this case.

Q.36½. Mr. Claussen, I show you Defendants' Exhibits 66, 67, 68 and 69, and ask you to state if those are photostatic copies of the checks which you caused to be issued to Mr. Street, together with the endorsements on the back thereof? A. Well, these are the checks that I had issued and the checks which I signed and the checks which I presume Mr. Street endorsed; the signature very closely resembles it, if not exactly. I would say that is Mr. Street's signature.

Senator Hollingsworth: We offer in evidence Defendants' Exhibits 66, 67, 68 and 69.

(Which said Defendants' Exhibits 66, 67, 68 and 69, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

The London and Lancashire Ins. Co. Ltd.
WESTERN DEPARTMENT
CHICAGO

Chicago, Ill. MAR 24 1926 No. 162005

Continental & Illinois National Bank and Trust Company (2-31)

Pay to the order of Estate Agents $ 37.52 55

THIRTY SEVEN HUNDRED FIFTY TWO DOLLARS FIFTY FIVE CENTS

Countersigned L. Neuner Cashier

The London and Lancashire Ins. Co. Ltd. G.W. Manager

By the endorsement of this voucher check the payee acknowledges payment in full settlement of account as stated within

C R Agent

FOR DEPOSIT WITH CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

PAID THROUGH CHICAGO CLEARING HOUSE

MAR 25 1926

P 11 M

D67

Orient Insurance Company
OF HARTFORD, CONN.
WESTERN DEPARTMENT
CHICAGO

Chicago, Ill. MAR 24 1936

VOUCHER CHECK
No. 53241

County Trust Illinois National Bank and Trust Company of Chicago (2-3)
CHICAGO, ILL.

Pay to the order of C R Sherrington Agent $3506.24

EXACTLY THIRTY FIVE HUNDRED SIX DOLLARS TWENTY FOUR CENTS

WELLINGTON AVE. CHICAGO

W P H

Countersigned

L D Turner
Cashier

Orient Insurance Company

C Clausson
Manager

Copy of Report sent our London Office showing Net as having been received from Trustees for London & Lancashire, Safeguard, Plant and Law Book.

PAID THROUGH CHICAGO CLEARING HOUSE
P 11 M
MAR 25 1936
TO THE CITY NATIONAL BANK AND TRUST CHICAGO

By the endorsement of this voucher check the payee acknowledges payment in full settlement of account as stated thereon.

C R Sherrington Agent

FOR DEPOSIT WITH THE COUNTY TRUST COMPANY OF CHICAGO

Safeguard Insurance Company.
OF NEW YORK.
WESTERN DEPARTMENT
CHICAGO

VOUCHER CHECK No. 13747

Chicago, Ill. MAR 24 1936

Continental Illinois National Bank and Trust Company (23)
OF CHICAGO

Pay to the order of Rebecca Rosenberg $493.38

EXACTLY FOUR HUNDRED NINETY FIVE DOLLARS THIRTY EIGHT CENTS

COMPANY
CLOVELL
C. P.
Countersigned
Safeguard Insurance Company
Manager

Defts Ex 68 Ey

PAID THROUGH CHICAGO CLEARING HOUSE
P 11 M
MAR 25 1936

FOR DEPOSIT WITH
CITY NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

By the endorsement of this voucher check the payee acknowledges payment in full settlement of account as stated within.

VOUCHER CHECK
No. 17276

MAR 24 1936

Pay to the order of Schlesinger & Meyer Inc.

City National Bank and Trust Company of Chicago

$1307.63

EXACTLY THIRTEEN HUNDRED SEVEN DOLLARS AND SIXTY-THREE CENTS

Countersigned

Lee Union Products Company

Treasurer

Assistant Cashier

Manager

Ellis Elliott & Scott Incorporated

OF LONDON, ENGLAND

WESTERN DEPARTMENT

CHICAGO

By the endorsement of this voucher check the payee acknowledges payment in full settlement of account as stated within.

FOR DEPOSIT ONLY

CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO

D69

Q.37. Now, after your conversation with Mr. Street, did you pass on any information to the New York office? I believe there is a New York office. A. No, sir.

Q.38. Or I mean the Hartford office? A. No, sir, I did not pass any information.

Q.39. Who was in charge of the office in Hartford at that time? A. Mr. Gilbert Kingan, but Mr. Gilbert Kingan even has absolutely nothing to do with our branch at Chicago. Any reports which we make we make direct to our head office at London, even for the Orient and the Safeguard.

Q.40. Did you have any communication with your London office in regard to this transaction? A. Only that the remittance had been made.

Q.41. How was that communication made, by letter or telephone or telegram or what? A. That was made by letter.

Q.42. And do you have the copy of the letter which you wrote the London office in regard to this matter? A. I think I have in the file.

Q.43. Do you have it here with you? A. No, sir.

Q.44. Will it be available this morning? A. No, sir, our office is closed on Saturday and it would be in the secretary's files and they are not available to me.

Q.45. Now, Mr. Claussen, we will probably be back here at a later date. Could you supply that letter at that time? A. I think I could.

The Special Master: Mr. Claussen, in order to avoid the necessity of bringing you up again, are you willing to undertake to locate that letter and turn it over to the attorneys for the insurance companies in order that they may furnish it and put it in the record without taking your testimony again?

A. Yes, I would be willing to do that, surely.

Q.46. (By Senator Hollingsworth) Aside from that letter that you wrote to the London office, did you have any further communication about the matter? Did a reply come to you from the London office or any inquiry about it? A. Yes, just to keep them further advised as to how the case proceeded.

Q.47. But as to the particular transaction of the 5 per cent, was there any further correspondence between you in regard to that one transaction? A. None that I recall.

Q.48. Now, I have before me what purports to be some photostatic copies of your books of account. Will

you tell me the entry that was made in regard to the disbursement to Mr. Street? A. Well, this (indicating) is a copy of our cash book.

Q.49. First, I presume that the same entry was made as to each company, wasn't it, in wording, except as to the difference in amount? A. I would say so, yes, sir.

Q.50. Now, will you show me on there or read from that the entry that you made?

Mr. Berger: The legend is on each page, the typewritten legend on the side tells you about it.

Senator Hollingsworth: If you can show me, Mr. Berger, there is a bunch of small figures and I can't find it.

A. Here (indicating) is Missouri Insurance Department, this is shown—

Mr. Berger (Interrupting): That is "received." You want the "check out."

Senator Hollingsworth: I want the "check out."

Mr. Berger: Here is the London and Lancashire, "received," "paid." That (indicating) is the Safeguard "paid."

The Special Master: Well, the same bookkeeper kept all of the books. If you get one entry they will all be the same.

A. This is in the handwriting of one of the ladies in our cashiers' department and I would say that that was an entry that had been made there and a payment that had been made.

Q.51. (By Senator Hollingsworth) That simply shows Missouri Insurance Department, $495.38? A. That is correct.

Q.52. And that was the amount of the remittance check of the Safeguard Insurance Company to Mr. Street as agent as shown by Exhibit No. 68? A. Yes, sir.

Q.53. And a similar entry was made for the other companies? A. That is correct.

Q.54. For the correct amount? A. That is correct.

Q.55. I am not sure whether I asked you, but you had no communication with Mr. Kingan whatever about this transaction? A. None whatever.

Q.56. Have you told us the full extent of your knowledge concerning this matter? A. So far as I know, yes, sir.

Senator Hollingsworth: That is all, sir.

Cross Examination by Mr. Berger.

XQ.57. Mr. Claussen, he asked you about some letters, will you have copies of those made and mail them to me at New York next week? A. You want a copy of this letter made or would you rather have the original copy? I can give you either of them.

XQ.58. You might mail me the original. A. All right.

The Special Master: We will make a copy and send it back to you.

A. A copy of that copy?

The Special Master: We will make a copy and send you back what you send us.

XQ.59. And if in looking through the file you find there any more correspondence, just send it to me. A. I will send it if there is any.

(Witness excused.)

(During the afternoon session of Monday, August 7, 1939, at Hartford, Connecticut, the following testimony with reference to said witness, Carsten Claussen, was presented:)

Mr. Berger: Mr. Claussen of the London & Lancashire was asked that he forward to us copies of the letter covering the advice that he gave to the home office, and I am handing herewith Mr. Claussen's letter enclosing that letter with the exhibits and the response back from his home office in London.

Senator Hollingsworth: We ask that the reporter mark this as Defendants' Exhibit 225.

(Said letter, handed to the reporter, was marked for identification as "Defendants' Exhibits 225, 225a, 225b, and 225c, EFM," respectively.)

Senator Hollingsworth: We ask that this be made a part of the testimony of Mr. Claussen given in Chicago.

(Which said Defendants' Exhibits 225, 225a, 225b and 225c, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

THE LONDON & LANCASHIRE INSURANCE CO. LTD.

The London & Lancashire Insurance Company Ltd

OF LONDON

H C. CLAUSSEN
MANAGER

INCORPORATED

WESTERN DEPARTMENT
223 WEST JACKSON BLVD. CHICAGO

Chicago, 1st August, 1939.

Homer H. Berger, Esq.,
c/o Waldorf-Astoria,
New York City.

Dear Mr. Berger,

Following your request of the 29th ultimo, I beg to enclose:

(a) Carbon copy of a report of the status of our Missouri Impounded Premium account as of June 30th, 1936.

(b) Carbon copy of my letter, dated July 10th, 1936, transmitting the report to our Head Office

(c) Original letter from our Head Office, dated the 24th of July, 1936, acknowledging receipt of (a) and (b)

In explanation of the enclosed statement, I will advise that the figures under "Rec'd from Trustee" represent the amounts of checks we received from Mr. Street less amounts of checks which we paid to Mr. Street, accounted for as follows:

L&L	(1) Rec'd from Mr.Street $8255.62	(2) Paid to Mr.Street $3752.55	(3) Net $4503.07
Orient	(1) Rec'd from Mr.Street $7713.73	(2) Paid to Mr.Street $3506.24	(3) Net $4207.49
Sfgd.	(1) Rec'd from Mr.Street $1089.87	(2) Paid to Mr.Street $ 495.38	(3) Net $ 594.49
LU&R	(1) Rec'd from Mr.Street $2876.79	(2) Paid to Mr.Street $1307.63	(3) Net $1569.16

The above amounts, (1) and (2), can be verified with figures shown in the photostats of our cash book pages which, as I understand it, are already part of my testimony.

You will note, further, that there is a slight descrepancy between the amounts shown in the attached statement and my testimony, in that I stated approximately $11,000 in checks had been turned over by me to Mr.Street, whereas the amount actually is $9061.80.

I will ask that the enclosed papers be returned to me after they shall have served your purpose.

Yours very truly,

C Claussen

Manager.

Enc.

Chicago, 10th July, 1936.

The General Manager,
London.

Dear Sir:

Re: Missouri Impounded Premiums.

Enclosed I beg to hand you a summary showing changes in the Missouri Impounded Premium account since we furnished you figures as of 31st March, 1936. The alterations are due to "Checks Paid to and Received from Custodian since 31st March, 1936", "Checks Received from Custodian since 31st March, 1936", and "Return Premiums in June 1936 Account". The "Impounded Premiums as of 30th June 1936" are as they will appear in our June Balance Sheets.

Yours very truly,

Manag

Enc.

a/c

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MISSOURI IMPOUNDED PREMIUMS

Company	Impounded Premiums 12-31-35	Paid to Custodian Prior to 3-31-36	Checks paid & Received from Custodian Since 3-31-36	Securities Received from Custodian	Checks Rec'd. from Custodian Prior to 3-31-36	Checks Rec'd. from Custodian Since 3-31-36	Checks Rec'd. from Trustee	Ret. Prem. June 1936 Account	Impounded Premiums 6-30-36
L. & L.	82,119.22	5.07	30.59	35,513.33	213.85	1,798.37	4,503.07	17,357.74	22,707.34
ORIENT	76,718.96		9.12	32,738.85	357.12	1,966.42	4,207.49	16,226.06	21,232.14
SAFEGUARD	10,792.01			4,102.50	464.52	86.94	594.49	2,276.28	3,267.28
L.U.& R.	28,051.67		16.99	11,711.94	705.29	159.11	1,569.16	5,869.20	8,053.96
	197,681.86	5.07	4.48	84,066.62	1,740.78	4,010.84	10,874.21	41,729.28	55,260.72
S.M.	2,496.54								2,496.54
TOTAL	200,178.40	5.07	4.48	84,066.62	1,740.78	4,010.84	10,874.21	41,729.28	57,757.26

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FOREIGN. A/cs Dept.

MEMORANDUM.

24th July, 1936.

From

The London and Lancashire Insurance Company, Ltd.

7, Chancery Lane, London, W.C.2.

TELEGRAPHIC ADDRESS: "LONDLANC, ESTRAND, LONDON."
CABLES:-"LONDLANC, LONDON".

To

The Manager, CHICAGO.

RECEIVED
AUG 3 - 1936
CHICAGO, ILL.

Missouri Impounded Premiums.

We are obliged for your letter of the 10th inst. enclosing statement of the changes in the impounded premiums since the March Quarter.

Dr. Dr v5 c
Ed

CHARLES H. SMITH, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Where do you live, Mr. Smith? A. In Chicago. Do you want the street address?

The Special Master: No, that is enough.

Q.2. No, that isn't necessary. In 1935 and 1936 were you connected as an official with any insurance company involved in the Missouri rate litigation? A. The Hartford Fire Insurance Company.

Q.3. The Hartford Fire Insurance Company? A. Yes.

The Special Master: Were there any affiliated companies?

A. The Citizens Insurance Company too, yes.

The Special Master: Just those two, the two, Hartford Fire Insurance Company and Citizens Insurance Company?

A. Yes.

Q.4. And in what capacity were you serving those companies? A. I was then assistant general agent.

Q.5. Now, as such did you have anything to do with any disbursements out of the impounded premium funds? A. No.

Q.6. That was not handled through you in any way or manner? A. No.

Q.7. You had no knowledge whatever concerning it? A. None whatever.

Q.8. Are you now a member of the Subscribers' Actuarial Committee? A. I am.

Q.9. When did you go on the committee? A. June, 1937.

Q.10. And have served continuously on that committee to this date? A. Yes.

Q.11. Before you went on to the committee did you have any knowledge whatever concerning this rate litigation as to the details of it? A. No, I would say not as to the details of it. I knew that it was going on and that is about all.

Q.12. When you went on in 1937, did you learn that a compromise had been made and that a decree had been entered in regard to the impounded premiums? A. Well, I had learned it before that. I had heard before that; I don't remember that I heard it at the time that I went on.

Q.13. After you went on the committee, was the matter discussed at any of the meetings? A. I don't think it was formally; there were informal discussions about it, that is, informal remarks made about it, but I don't remember that it was discussed formally except on one occasion we talked about the fund that was in the hands of the trustees and distribution to the companies of a part of that fund and that is all that I can recall that was taken up formally in the meetings.

Q.14. What was that discussion? A. It was looking toward distributing more money of the fund that was in the hands of the trustees to the companies rather than holding it in the hands of the trustees.

Q.15. And that was what is commonly called the 30 per cent fund? A. Yes.

Q.16. Now, at that time was there any mention made of the fact that 5 per cent of the moneys paid out of the 30 per cent fund to the companies had been returned back to Mr. Street for any purpose? A. No, I had no idea until the newspapers told us that any such fund had ever been given to Mr. Street.

Q.17. You didn't know it until the Missouri story came out in the press? A. No, and when it first came out I thought it could never be true because I had never heard of it.

Q.18. And you didn't know up until that time that Mr. Street had gotten 5 per cent from the companies? A. Knew nothing about it whatever.

Q.19. After you heard of that affair did you discuss it with any of the executives of any of the insurance companies involved? A. Yes; yes, it has been discussed a great deal.

Q.20. Did any of them tell you that they had any knowledge concerning the matter? A. Not one.

Mr. Berger: What do you mean, "knowledge concerning it?"

Q.21. I mean knowledge concerning Mr. Street's activities? A. That is what I assumed in my answer that you meant.

Senator Hollingsworth: I think that is all.

Cross Examination by Mr. Berger.

XQ.22. Mr. Street was not on the Committee when you went on? A. No, he had retired before I became a member.

XQ.23. Your first meeting was probably in December, 1937? A. I can't tell, I don't know. I would say before that, but I am not sure.

XQ.24. Well, the record they furnished me was that you were a member since December, 1937. That is Mr. Henne's advice to me. A. I think it was June, but I haven't checked it, Mr. Berger.

XQ.25. All right. Well, Mr. Street had already left the Committee? A. Mr. Street was no longer a member of the Committee at that time.

Mr. Berger: That is all, thank you very much.

(Witness excused.)

Senator Hollingsworth: I think that concludes our testimony for the present.

The Special Master: Show the further hearings to be continued in New York on Monday, July 31, 1939.

Whereupon, the further taking of testimony in said case was adjourned until nine o'clock a. m. of Monday, July 31, 1939, at the office of the Insurance Executive Association, 116 John Street, New York City.

MORNING SESSION, MONDAY, JULY 31, 1939.

Pursuant to adjournment as aforesaid, at nine o'clock a. m. of said Monday, July 31, 1939, at the offices of the Insurance Executive Association, 116 John Street, New York, New York, the taking of testimony continued as follows:

Mr. David A. Murphy of the firm of Harding, Murphy and Tucker of Kansas City, Missouri, appeared, representing the plaintiffs, in addition to counsel previously noted.

Judge Henson: It is hereby stipulated and agreed that these witnesses this morning, including the present witness, may be taken as a deposition before Joseph F. Shea, a Notary Public, without further notice there appearing, affixing the appearances as they were at Chicago, plus Mr. David Murphy, and that the depositions so taken may be submitted to and considered by the Special Master, to the same effect as if taken before the Master.

General Bullitt: That is satisfactory.

Mr. Murphy: Objections may be made and ruled upon by the Master.

Judge Henson: That is what I was trying to say.

Pursuant to the foregoing stipulation, the following deposition was taken before Joseph F. Shea, Notary Public in and for Kings County, New York:

ROBERT P. BARBOUR, of lawful age, being produced, sworn and examined on behalf of the defendants, deposeth and saith:

Direct Examination by Senator Hollingsworth.

Q.1. State your name. A. Robert P. Barbour.

Q.2. Where do you reside, Mr. Barbour? A. Montclair, New Jersey.

Q.3. What is your connection with the Northern Assurance Company group of Insurance Companies? A. United States manager.

Q.4. And were you United States manager in the years 1935 and 1936? A. Yes, sir.

Q.5. Where were your offices? A. At 80 John Street.

Q.6. During that period of time were you familiar with the rate litigation that was pending in Missouri involving these insurance companies? A. I knew there was litigation.

Q.7. Did you sometime during the month of May of 1935 learn anything about a proposed settlement or compromise of these cases? A. Shall I tell you in my own way?

Q.8. If you will answer that question, did you learn during 1935 that a compromise or settlement of these cases was being considered or negotiated? A. I can not answer that "Yes" or "No."

Q.9. Well, will you tell me when the first information came to you about any settlement of these cases? A. In the spring of 1935, the date I don't recall. I was asked to meet with some other gentlemen in order to discuss with Charles R. Street a question of settlement of Missouri litigation.

Q.10. And who was the person who asked you that? A. You mean to come?

Q.11. To attend the meeting. A. The telephone call was from this office; I don't know who it was.

Mr. Berger: You mean Mr. Haid's office?

A. Yes, this is Mr. Haid's office.

Q.12. (By Senator Hollingsworth) And did you come to the meeting? A. Yes, sir.

Q.13. Where was it held? A. As I recall, in this room.

Q.14. And about when was it held? A. Well, the spring of 1935, but I don't remember the month or day.

Q.15. Can you give me the names of the persons who attended that meeting? A. No, I don't remember them.

Q.16. Well, you remember that you attended it? A. Right.

Q.17. Give me the name of one of the other men who attended it. A. Mr. Street, Charles R. Street.

Q.18. Give me the name of another man. A. I have no record of it. I have an impression that Mr. Kurth of the Home, but I honestly don't remember who were there.

Q.19. Approximately how many men were here? A. I should say not less that five nor more than fifteen.

Q.20. Well, name one other man, please, who attended the meeting. A. I am sorry I can't; I don't recall. I made no memorandum.

Q.21. Well, regardless of memorandum, can't you remember the name of any other person than Mr. Kurth and Mr. Street and yourself? A. No, I can not.

Q.22. What were the companies that were represented here? A. I do not recall. I have no recollection.

Q.23. Who presided at the meeting? A. That I can not tell you.

Q.24. Was it daytime or night? A. In the day.

Q.25. You were in this room? A. Correct.

Q.26. Were any notes or memoranda made by anyone concerning the action of that meeting? A. Not so far as I know.

Q.27. What was the first opening of the meeting; what was said? A. That Mr. Street wished to talk with some of the officials here in the east with respect to a possible settlement of the Missouri litigation.

Q.28. Now, that was said when you came in? A. Yes.

Q.29. Who said it? A. I can't tell you.

Q.30. Was Mr. Street there present at the time that was said? A. Right.

Q.31. Do you remember where the man was standing or sitting when he said it; where he was about the table? A. No.

Q.32. But you remember that that was said? A. Yes.

Q.33. How long were you in session? A. Why, I should think probably about an hour.

Q.34. Sir? A. Probably about an hour.

Q.35. All right. The opening statement was that Mr. Street wanted to discuss the settlement. What was the next thing that was done? A. Of course, I don't know what the next thing was, but I should think likely that Mr. Street then made some sort of a statement.

Q.36. At that time there was some nine millions of dollars of impounded premiums in this Missouri rate litigation; do you recall that? A. I don't recall the figures.

Q.37. Well, you knew that it amounted to approximately that sum? A. I knew it was a large sum.

Q.38. And your company had impounded premiums, the Northern Assurance Company, to the extent of $84,-743.20, did it not? A. I can't answer that, sir.

Q.39. About that amount? A. Without the record—

Q.40. (Interrupting) Now, I didn't ask you your connection with the London and Scottish Assurance Corporation. A. I am also United States manager of that.

Q.41. What is the relation of these companies to each other? A. The Northern owns the London and Scottish.

Q.42. And assumes the management and control of it? A. Right.

Q.43. All right. That was true in 1935 and 1936? A. Right.

Q.44. Mr. Street then addressed the meeting, did he? A. I should think that was likely.

Q.45. Well, you attended it? A. Yes.

Q.46. And he did address it sometime during the course of the meeting? A. That is correct.

Q.47. What did he say? A. I can give you only the impression that I now have of the statement he made, which was to the effect that he believed the Missouri litigation could be settled if he were given authority to carry out the negotiations, that he felt it could be done better by one man than by a committee; that there were numerous matters growing out of the litigation that had to be dealt with; that he was familiar with all of them and believed that if the companies would place the matter in his hands that he could arrive at a definite and final settlement; that to carry this out it would have to be understood that he was acting as agent for the companies involved and that he would need to be furnished with money for expenses in connection therewith.

Q.48. What companies were represented at the meeting? A. I can't tell you.

Q.49. Did he tell you with whom he was negotiating? A. He gave no details whatsoever.

Q.50. Well, he told you what the tentative plans of the settlement were, didn't he? A. No, sir.

Q.51. He told you that he had a settlement under consideration and he told you there were some negotiations, did he? A. Negotiations to be undertaken.

Q.52. To be undertaken? A. Yes.

Q.53. And he told you that he had to be designated as agent of the companies in order to effect it? A. It would have to be understood that he was acting on behalf of the companies, right.

Q.54. And did you then authorize him to act for your company? A. No, sir.

Q.55. Sir? A. No, sir.

Q.56. What did you say? A. I don't remember saying anything at that time or later on beyond listening to what took place and hoping that the Missouri cases would be gotten out of the way.

Q.57. Well, did you ask him what the terms of the settlement would be? A. No, sir.

Q.58. Were you interested in them? A. Not nearly so much interested in the terms as in getting them out of the way.

Q.59. You were very anxious to dispose of them? A. Like to get rid of it and not have that as something to think about.

Q.60. What action was taken at the meeting? A. There was no formal action, so far as I recall.

Q.61. Well, he had requested a meeting to designate him as the agent of the companies? A. Yes.

Q.62. Well, was there some discussion about it? A. Yes, there was discussion.

Q.63. What was the discussion about designating him as agent? A. I don't recall any discussion in that respect.

Q.64. Well, you remember there was some? A. Yes.

Q.65. Was somebody for it? A. I don't recall that.

Q.66. Was there anybody against it? A. I don't recall that either.

Q.67. Did any person say that they objected to him acting as agent? A. I don't recall that.

Q.68. Well, what was further said after he suggested that he be designated as agent? A. The only further

thing that I recall is that he was going up to Hartford and discuss the matter with some Hartford officials.

Q.69. To refresh your recollection, wasn't this on May 2, 1935, that you held the meeting in New York? A. I don't know.

Q.70. All right. When did he say he was going to Hartford? A. I don't recall when.

Q.71. He told you that? A. Yes.

Q.72. All right, and what did any of you people say who attended the meeting? A. I don't recall that.

Q.73. Was there anything said? A. Bear in mind that that is four years ago. I just don't remember.

Q.74. Well, can't you tell whether there was anything said? A. No.

Q.75. Well, you didn't just sit there, did you? A. No, there was discussion, but what was said, I don't remember.

Q.76. Was there any person who suggested that action be taken? A. I think it is fair to say this: At the conclusion what I took away from there was that all of the men who were here would be happy to get the Missouri litigation out of the way.

Q.77. Let's not deal with the mental state so much as with what was done. What action was taken? A. I don't recall there was any action taken.

Q.78. Did you permit Street to leave here thinking he was acting as agent for the companies? A. This was an informal meeting.

Q.79. I understand that, but regardless of its informality, did you permit Street to leave here understanding that he was acting as agent for these companies? A. I don't know whether he thought that or not. I had no conversation with him nor did I take part in any definite action.

Q.80. You had been requested to come here to attend a meeting? A. Right.

Q.81. And you came here and Mr. Street suggested a compromise and you wanted the compromise, did you? A. You are putting it much more definitely than was the fact.

Q.82. Well, you wanted the settlements of the cases? A. Yes, a settlement of the case.

Q.83. And Mr. Street suggested it would be necessary for him to be designated agent if that were done? A. No, sir.

Q.84. Well, he thought it would be better? A. No, sir, that isn't what I said. I said that he said, of course, he would have to act as agent of the companies in the matter.

Q.85. Yes, and he said he could act better than a committee? A. Correct.

Q.86. And said he would have to have some money? A. That is correct.

Q.87. Well, you agreed to raise some, didn't you? A. No, sir.

Q.88. Sir? A. I didn't.

Q.89. Well, what was said about it? A. I don't know. I don't remember.

Q.90. Well, somebody said something after he suggested that he needed money, didn't they? A. They probably did.

Q.91. What was it? A. I don't know. I don't remember. I certainly would tell you if I did, but I don't.

Q.92. Don't you know they agreed to raise $62,000.00? A. No.

Q.93. Was that amount discussed? A. I don't remember any discussion of any amount.

Q.94. He told you that it was necessary to raise $100,000.00, you remember that? A. I do not.

Q.95. In both groups? A. I do not.

Q.96. Do you recall that he said that he needed $62,500.00 from the New York group and $37,500.00 from the Hartford group? A. No, sir.

Q.97. You knew he was going to Hartford? A. He said he was.

Q.98. What did he say about needing money in order to effect the compromise? A. That there would be expenses in connection with it.

Q.99. What expenses? A. He didn't specify.

Q.100. Well, he talked something about the amount of money, didn't he? A. I don't recall that.

Q.101. You knew he was in effect requesting you people to raise money, don't you? A. I wouldn't say "raise money."

Q.102. Well, get money, deliver money to him? A. Deliver money to him for expenses, providing it was agreed upon that he was to enter in negotiations for a settlement.

Q.103. To raise money for him, provided he entered into negotiations for a settlement? A. I didn't say "raise money."

Q.104. Well, deliver money to him? A. There is quite a distinction between raising money and contributing to expenses.

Q.105. Well, contributing to expense; I will use your words. You knew that he expected you to contribute money in order to get him started on the negotiations? A. Provided that we agreed to the plan, yes.

Q.106. You were interested in knowing how much money you had to contribute, weren't you? A. This was all preliminary and so far as I know, there was no discussion of that whatsoever.

Q.107. What was said that indicated to you it was preliminary? A. Nothing was said to indicate that. It merely was preliminary. It was a meeting that first discussed, or coming together of men who first discussed it.

Q.108. Did you have any further meeting? A. I attended no further meeting.

Q.109. Do you know of any further meeting? A. I do not.

Q.110. Did you get any information about any further meeting? A. I did not.

Q.111. Did he tell you that he was going to Hartford to ask for further contributions? A. He said he was going to Hartford to discuss the matter with the Hartford officials.

Q.112. Well, he told you he wanted to take some message to the Hartford group as to what your action was? A. I don't recall that he said that.

Q.113. Did he tell you to whom he was going to deliver the money? A. No.

Q.114. Did you get any idea whether it was to be $100.00 or $100,000.00 that was to be raised? A. No, sir.

Q.115. Did any person at that meeting make any inquiry of Mr. Street as to the amount of money that might be needed? A. I don't recall there was any discussion whatsoever.

Q.116. Well, you were here about a half an hour? A. Well, I said before I thought it might have been an hour.

Q.117. An hour? A. I don't know just how long it was.

Q.118. You were in meeting about an hour? A. That is my recollection.

Q.119. You didn't just sit here and look at each other? You talked about something, didn't you? A. Yes.

Q.120. What did you talk about? A. Missouri litigation.

Q.121. What did you say about it? A. That I don't recall.

Q.122. What terms of settlement were discussed? A. I recall no discussion whatsoever of details.

Q.123. Were you advised that you were to get any of the impounded premium back? A. There was no discussion of details at all at the meeting I attended.

Q.124. Did anyone say anything about getting any part of it back? A. I recall nothing about it.

Q.125. Did Mr. Street tell you after the settlement you would get part of it back? A. No details were discussed that I remember.

Q.126. You sat here in meeting for an hour and talked about the Missouri rate litigation? A. Talked about it in general terms and talked about the advisability of Mr. Street undertaking negotiations to settle it.

Q.127. Mr. Barbour, as I understand you now, you were very anxious to dispose of this litigation, hopeful of it; you were called here to a special meeting. Mr. Street told you that he might be able to consummate the thing that you wished, and that he needed some money, or money would have to be contributed. Do you remember the place and length of time you were here? Do you have any explanation to give as to why you can't give us any further information concerning that meeting? A. Simply it is three years ago and I didn't charge my mind with it particularly and made no memorandum.

Q.128. You came here with your mind charged that you were anxious to get rid of this litigation and would be happy if that could be consummated? A. That was a state of mind. I didn't charge my mind with it.

Q.129. Well, it was fixed there? A. Oh, yes, a long time.

Q.130. Very deeply affixed there? A. Yes, a long time, very anxious to get rid of that, as well as all other troubles.

Q.131. When you left here did you think it was to be consummated or settled? A. I didn't know what might be settled by those who had so much greater in-

terest than we had, that I was contented to leave it in their hands.

Q.132. Your interest was approximately $98,000.00, wasn't it? A. I don't remember the figures.

Q.133. I show you a file that apparently came from your office. See if that doesn't refresh your recollection.

Mr. Berger: Those figures didn't come from his office. If you want to, though, we will stipulate there is the impoundings of those two companies with the custodian on policies effective to May 1, 1935. That is this figure here, which is $98,209.79.

Q.134. (By Senator Hollingsworth) I believe you stated that you thought that Mr. Kurth was here? A. Kurth, yes.

Q.135. And he is of the Home group? A. That is correct.

Q.136. Was anyone here from the Continental group? A. I don't remember who was here.

Q.137. You don't remember about the Continental group, whether there was anyone here? A. No.

Q.138. Do you know Mr. Koop? A. Yes.

Q.139. Was he here? A. I can't tell you.

Q.140. Do you know Mr. Sterm? A. Yes.

Q.141. Was he here? A. I don't remember.

Q.142. And you can't fairly tell us the name of any person except Mr. Kurth and Mr. Street and yourself? A. No, I can not.

Q.143. Was Mr. Paul Haid here? A. I am not sure whether he was sitting here or not. I saw him when I came over here. I don't remember whether he was in the room or not.

Q.144. Did you tell Mr. Street or anyone tell him here at the meeting that you would let him know what the action of the parties present would be at a later date? A. I don't recall that, but I assume that that was done.

Q.145. Did you leave here understanding there would be further meetings? A. He was going to Hartford. I don't remember what was to happen after he went to Hartford.

Q.146. Did he tell you he was going to Hartford for the same purpose? A. Yes—no, I don't know that he said that, but it is assumed to be that.

Q.147. Prior to that time had you talked with Mr. Street about a settlement of these cases in any way? A. Never had discussed it with him.

Q.148. In other words, that came to you as absolute news? A. Right.

Q.149. Did you afterwards learn that he raised or procured contributions to the extent of $100,000.00? A. I afterwards learned that we contributed 5 per cent of something.

Q.150. That was a year later, wasn't it? A. I have forgotten about that.

Q.151. Well, as a result of this meeting, did you contribute any flat sum of money? A. No, sir.

Q.152. When I say "you," I mean your companies. A. No, no, certainly.

Q.153. After that meeting did you make any inquiry to find out what had become of Mr. Street's proposal? A. No.

Q.154. Did you get any report as to the Hartford meeting? A. No.

Q.155. Did you ask for one? A. No.

Q.156. Why didn't you? A. Because for years there had been discussions of all kinds and shapes and descriptions of the litigation in Missouri, and having a very small interest there I just didn't pay any attention to what was going on, but left it in the hands of those who were in charge of it, which was Hicks and Folonie.

Q.157. You mean that you considered some $98,000.00 as being a negligible sum and not worth any consideration?

Mr. Berger: That is not what he said.

Q.158. (By Senator Hollingsworth) Well, you had a very small interest? A. Our business in Missouri is a small part of our United States business, and I didn't think there was anything I could individually do to help the situation.

Q.159. When did you learn that the compromise had been effected? A. I don't remember that.

Q.160. Was it about the time or shortly after it was effected? A. I don't know when it was effected.

Q.161. May 18, 1935, some sixteen days—well, you haven't stated the time of the meeting here. A. I presume I knew of it if it came out in the newspapers or if there were any advices sent out by the Subscribers Actuarial Bureau or any other of the company organizations.

Q.162. The Actuarial Committee did notify you, didn't it? A. I can't answer that.

Q.163. You were very glad to learn that it had been settled? A. And will always be glad to learn any litigation is settled.

Q.164. Just this litigation, you were very happy about it? A. Surely.

Q.165. You had been very much concerned? A. Glad to get it out of the way.

Q.166. You stated a moment ago that the amount involved was very inconsequential insofar as your general business was concerned? A. Well, I wouldn't put it quite that way, but our interest in Missouri in connection with the whole United States was not important enough to spend a great deal of time over it.

Q.167. Didn't I understand you to say there had been many conferences concerning the Missouri rate litigation? A. No, I don't think I said that.

Q.168. Didn't I understand you to say that in substance a moment ago? A. I said many statements had been made and many lawyers—whenever the lawyers involved, whenever we came together in the meeting, would tell us something about Missouri. It was a constant matter of discussion between the men.

Q.169. That is what I say. A. And if a lot of men got together and happened to speak of Missouri, they would start to talking about Missouri, and so on.

Q.170. About Missouri litigation? A. One of those things in the air all the time.

Q.171. Who in your office would have the files showing advices or information that you received from time to time from the Actuarial Committee in regard to this litigation? A. It might be in any one of four files.

Q.172. Who would have charge of those files? A. My file would be in charge of my secretary, Miss Whaley. Our assistant manager, Mr. Lane, has a file in which he has some information about this and that, the head of our western department.

Q.173. What is his name? A. Earl D. Patton has a file and the accounting department has a file.

Q.174. And those four files would contain all of the information of your company? A. That had to be retained, yes.

Q.175. Has there been any of it destroyed? A. Not so far as I know.

Q.176. You make it a practice to retain your entire file? A. Oh, no, there are a great many files that we

don't retain because we think they are useless. We clean them out normally once a year of matters that we think are of no further importance.

Q.177. Have you done any cleaning out of your files in this Missouri rate litigation? A. Not so far as I know.

Q.178. What is Miss Whaley's first name? A. Viola.

Q.179. Mr. Lane, I believe, is J. V. A. J. V. Lane, yes.

Q.180. The other gentleman whom you named? A. Earl D. Patton.

Q.181. Where is he, Chicago or here? A. He is here; his office is here.

Q.182. In the accounting department? A. Right.

Q.183. Who is the man who has charge of that? A. Robert C. Angus.

Mr. Berger: They have no western department.

Q.184. (By Senator Hollingsworth) You stated that whenever you men got together there was always discussion, or not always, but frequently discussion on the Missouri rate litigation? A. Yes.

Q.185. After this meeting did discussions of the Missouri rate litigation matter cease? A. Well, that is a rather direct question that is hard to answer. I should imagine not.

Q.186. All right, when you got together and discussed it after this meeting, I presume that the proposed settlement was discussed, was it not? A. I remember no discussions of any kind, shape or nature There may have been and there may not have been. You know, we are quite a gossipy crowd, this insurance crowd. We are apt to talk about anything that is on the minds of people.

Q.187. Well, is it general that you always forget what happens during those discussions? Is that general, peculiar to your group also or not? A. I don't suppose I could tell you what was said in any discussion in the last ten years unless it was just last week or I made a note of it.

Q.188. That was in 1935. When did you next hear, to your recollection, about the compromise? A. Well I am trying to give some better answer than just simply that I don't recollect at all when I heard it, but, as a matter of fact, I don't.

Q.189. Did you hear of it from the time of that meeting up until you were called on for an assessment? A. I don't recall that I did.

Q.190. When you learned the terms of the compromise, did you discuss that among your group? A. No, sir.

Q.191. Why the silence about it? You had discussed it theretofore frequently, you say. A. When you refer to my group, I thought you meant my companies.

Q.192. No, I mean these groups that would meet and discuss Missouri litigation. A. Oh, we may have and we may not. I have no recollection one way or the other. Undoubtedly we did. Somebody may have said something.

Q.193. Was it a satisfactory compromise? A. Any compromise that was carried through would have been satisfactory to me.

Q.194. Any compromise? A. Any compromise would have been satisfactory, to get it out of the way.

Q.195. Even if you lost all of your impounded premiums? A. Yes.

Q.196. As a matter of fact, you got 80 per cent of it back, didn't you? A. It wouldn't have been just or equitable, but I would like to have gotten rid of it and out of the way.

Q.197. But you got 80 per cent back, 50 per cent net to you, so it was a very happy compromise for you, wasn't it? A. Very glad to get the money back, yes, indeed.

Q.198. And in 1936 you were called upon to contribute 5 per cent of your impounded premiums because of the Missouri rate litigation settlement, to Mr. Charles R. Street, weren't you? A. Right.

Q.199. Who acted for you in the compromise, Charles R. Street? A. I knew nothing about it until I was asked for a contribution. I don't know whether there was a compromise made before or after that or anything else in connection with it.

Q.200. You didn't even know that Street was acting for you in negotiating the compromise? A. Only from gossip.

Q.201. From gossip. Well, did you assume that to be true? A. Mr. Street and others of the managers in Chicago had been acting for all companies in the litigation.

Q.202. Well, when you learned that he was acting as a matter of gossip, did you assume that to be true? A. Yes.

Q.203. And it was satisfactory with you? A. Yes, sir, absolutely.

Q.204. Then you went under the assumption that Charles R. Street was acting as your agent in negotiating this compromise? A. Acting on behalf of all companies in negotiating a settlement.

Q.205. Including your companies? A. Yes, sir.

Q.206. When you learned of the compromise, you learned that only 20 per cent had been allocated to the policyholders? A. I don't remember the figures now.

Q.207. You remember the percentages, don't you? A. No.

Q.208. Do you remember that 50 per cent came to you? A. I don't remember the percentage, no. The figures will speak for themselves.

Q.209. Do you remember that 30 per cent of this $9,000,000.00 impounded premiums was allocated, first, for the payment of expenses and the remainder to come to the companies? A. No; I didn't charge my mind with any of those details.

Q.210. You didn't even know and don't know now the terms of the settlement? A. No, sir.

Q.211. You knew that you had been subpoenaed here, did you not? A. Yes, sir.

Q.212. You wanted to give any information you had? A. Absolutely.

Q.213. Why didn't you look up these matters? A. It never occurred to me to do so.

Q.214. Well, did it occur to you that apparently you have had a lapse of memory about all of this matter? A. No. It isn't a lapse. I don't consider it a lapse of memory to not be able to give details that are three or four years old, or details of figures that are handled through an accounting division.

Q.215. You sincerely want to give the Special Master before whom these hearings are held all of the facts you can? A. Absolutely.

Mr. Berger: He has already given you the details of the figures on his books.

Senator Hollingsworth: This is a question of this man's knowledge of the details, and the details of the figures are incidental.

(Memorandum, handed to the reporter, was marked for identification as "Defendants' Exhibit 70, EFM.")

Q.216. I show you Defendants' Exhibit 70 and ask you to state if you recognize that as a memorandum out of your office. A. Yes, sir.

Q.217. Whose handwriting is it? A. Mine.

Q.218. When was it made? A. It is undated.

Q.219. Do you know about when it was made? A. I assume that it was made somewhere around this date.

Q.220. It has a stamp on it of March 23rd. A. Because there is a stamp, paid here by our office.

Q.221. Where did you get the information contained in that memorandum? A. I presume it was from our accounting department.

Q.222. Where did you get it, from your books? A. Right.

Q.233. Had you requested it? A. If I got it from them, I requested it, yes.

Q.224. All right, I note on there, "C. R. Street, Agent." A. Yes.

Q.225. Did you get that from your accounting department? A. No.

Q.226. Where did you get that? A. This memorandum, as I recall, was made after a visit from Mr. Erskine of this office.

Q.227. Mr. Erskine? A. Erskine of this office.

Q.228. Who is Mr. Erskine? A. He is assistant to Mr. Haid.

Q.229. Mr. Erskine came to your office? A. Came to my office, as I recall.

Q.230. Did you make a memorandum— A. (Interrupting) And either from information partly furnished by him and partly furnished by the accounting department, or wholly by him, verified by the accounting department, this memorandum was made and this, I assume, is the way the check is to be drawn.

Q.231. From whom did you get that information? A. That would be from Mr. Erskine.

Q.232. Mr. Erskine? A. Right.

Q.233. So you are reasonably sure that Mr. Erskine was in your office? A. Yes, I know he was.

Q.234. I note up there the figure 89. What does that 89 mean? A. I don't know.

Q.235. Did you make it? A. I don't know that. I haven't the slightest idea now what it means. These figures are all mine, this writing is mine.

Q.236. Now, I notice these checks "L & S" and "Northern." That means Northern and London and Scottish? A. Right.

Q.237. What checks does that refer to? A. Those, I think, are the checks we have received for 11 per cent of the impounded premiums. That is what it states here, and then we turned around and gave a check made out to C. R. Street, Agent, for an amount of $4,910.48.

(Photostatic copies of checks, handed to the reporter, were marked for identification as "Defendants' Exhibits 71 and 72, EFM.")

Q.238. Now, I hand you Defendants' Exhibits 71 and 72 and ask you to state if they are photostatic copies of the checks which you issued following Mr. Erskine's communications? A. Yes, sir.

Q.239. And the endorsements also on the back? A. These are the checks, right—wait a minute, oh, no.

Q.240. I lead you into that error. A. I am sorry, we paid the whole thing for the two companies and then they contributed back, returned.

Mr. Berger: Exhibit 72 is the check of the London and Scottish reimbursing the Northern Assurance for their proportion of check No. 71.

A. That is right.

Q.241. I was responsible for your error. A. All right, I am sorry.

Q.242. What did Mr. Erskine tell you that caused you to issue a 5 per cent check for the total amount of your impounded premiums to C. R. Street, Agent? A. That Mr. Street wished to have this money put into an account in his name as agent and it was for the expenses in connection with the negotiations he was carrying for a settlement of the Missouri litigation.

Q.243. Why, you knew the settlement had been made back in 1935, didn't you, and this check is dated in March of 1936? A. My dear man, I have heard nothing but settlement of the Missouri case since it started.

Q.244. I understand. I understand that. A. So I don't know.

Q.245. And may probably hear more. You knew that the settlement had been made in 1935? A. We never knew when any settlement was finally settled.

Q.246. And you knew the compromise had been made in 1935? A. I didn't know whether it was carried through or not.

Q.247. I understand that, but you knew it had been made and you got information according to your testimony a few minutes ago; is that right? A. Some case had been settled.

Q.248. Well, did you think it had to do with the Belgian Congo or Missouri litigation? A. Some Missouri litigation had been settled, but there was more than one case in Missouri.

Q.249. Did you find out from Mr. Street which case the 5 per cent was being paid in? A. No, sir, I made no inquiry.

Q.250. Not Mr. Street, I mean Mr. Erskine. A. I made no inquiry whatsoever.

Q.251. You made no inquiry? A. No, sir.

Q.252. And you didn't know when you gave him 5 per cent there, a check for four thousand, nine hundred and some odd dollars? A. That is right.

Q.253. What it was for, even? A. Expenses in connection with the negotiations being carried on by Mr. Street.

Q.254. What negotiation was he carrying on in 1936? A. I don't know.

Q.255. And you never asked? A. No, sir.

Q.256. You knew that the compromise provided that 30 per cent of this $9,000,000.00 impounded premium was allocated for the payment of expenses, didn't you? A. If that is the fact, I probably knew it at some time.

Q.257. 30 per cent of that fund would be in excess of two and one-half millions of dollars. Did you ask Mr. Erskine why in the name of common sense more money was needed for the payment of expenses? A. No.

Q.258. Did that occur to you? A. No.

Q.259. Did you have in mind at that time that 30 per cent had been allocated? A. Probably not.

Q.260. If you had known that or had it in mind, don't you think you would have made inquiry? A. I probably wouldn't, because I was so thoroughly fed up with all of the litigation that I made up my mind that I would just trail along. Mind you, I don't mean to criticize the litigation. I just mean that that was my attitude. I was just tired of it all.

Q.261. Not thy will, but his be done? A. That is right.

Q.262. When you made this to C. R. Street, Agent, whose agent was he? A. I never gave that a thought.

Q.263. Do you mean that you wrote a check to an agent and didn't know whom he was agent of? A. I considered that merely a designation for a bank account, and in a sense, of course, Mr. Street might be said to be acting as agent for my companies.

Q.264. Well, did you so understand? A. But he received no special authority to act as agent. He merely was the man, just as an attorney acts as an agent, or someone else. Someone else may go and do something for me, and in that respect is acting as an agent, but I had no thought of designating Mr. Street formally as an agent, and being bound by any acts that he might do without my knowledge.

Q.265. Did you ever undertake to find out what he did with this money? A. I never did, no, sir.

Q.266. Why didn't you, if you didn't intend to permit him to use it as he saw fit? A. Because I had great confidence in Mr. Street, in his honesty of purpose, in his ability and his knowing what he was doing.

Q.267. And it was because of that that you turned it over to him to use as he saw fit? A. Absolutely.

Q.268. Then you did intend for him to use it as he saw fit? A. You put those words in my mouth.

Q.269. Well, aren't they true? A. Of course, I expected he would use it as he saw fit.

Q.270. And you did intend to designate him as your agent in handling that money, didn't you? A. There was no designation as agent.

Q.271. Well, you intended for him to act as your agent when you wrote that check? A. Do you mean legally?

Q.272. Oh, I don't know whether it is legally or illegally, you intended for him to act as your agent? A. No, you mistake him. There is a great difference.

General Bullitt: Mr. Hollingsworth, I do not want to keep objecting, but throughout this your questions are just filled with statements of fact. If you ask the witness what the facts are—

Senator Hollingsworth (Interrupting): That seems to be about the only way.

General Bullitt: But you begin every question with a statement of fact and assume that fact.

Judge Henson: There is no hope of getting any facts out of the witness.

General Bullitt: Yes, there is, but Mr. Hollingsworth doesn't ask the witness for a fact, but he makes

a statement of his own and assumes that those things are in existence when the witness has never said they are in existence. He is just doing that all the time, but I really think you ought to ask the question. Lead him all you want to. I don't mind your leading.

Senator Hollingsworth: Thank you, sir.

General Bullitt: But don't assume the facts until he states whether they are correct or not.

Q.273. (By Senator Hollingsworth) Following the lecture, I will pick up my further examination. Did you ask Mr. Erskine why it was that you received 11 per cent and were immediately asked to turn back 5 per cent? A. I don't remember that I asked him that, but I seem to recall that the 11 per cent was money disbursed out of a bank account that was either in the Hicks and Folonie attorneys' office or Subscribers' Actuarial Bureau, or somebody else.

Q.274. Let me see if I can't refresh your recollection about that. The 11 per cent of your impounded premiums came to you from Folonie and Street as trustees, did it not? A. That is my recollection.

Q.275. All right. So you knew that you did have trustees? A. Yes, that is correct.

Q.276. And you knew that the trustees were holding 30 per cent of these funds for the purpose of paying expenses of this litigation, didn't you? A. I may have had that knowledge at some time.

Q.277. All right. A. I don't bring it together with this particular thing.

Q.278. Then why didn't you ask Mr. Erskine why the trustees who were charged with the burden of paying the expenses, didn't pay it instead of calling on you—Mr. Erskine calling on you for 5 per cent payable to Charles R. Street, Agent? A. As I have explained before, the Missouri litigation was so mixed up and our own interests in it were so relatively small that long before this I just depended on the men who were acting for the companies as a whole to carry out their plans.

Q.279. Will you tell me, did that strike you as a most unusual situation that you were getting a trustees' check for 11 per cent and immediately kicking back 5 per cent to Charles R. Street, Agent? A. No.

Q.280. You knew that Folonie and Street were charged with the payment of these expenses, didn't you?

Mr. Berger: I object to that because it is not a fact.

Senator Hollingsworth: The question is a fact.

Mr. Berger: Let me finish my objection.

Senator Hollingsworth: Pardon me.

Mr. Berger: The trustees' writing creating a trust is in evidence before this Master, and what they were charged with is a matter of law and not a matter of fact.

Senator Hollingsworth: I am finding out his knowledge.

Mr. Berger: I want to make my objections to the Master. There is no harm.

Senator Hollingsworth: I am answering the objection for the purpose of the Master's ruling.

Mr. Berger: All right, you and I are not going to fight.

Q.281. (By Senator Hollingsworth) Now, knowing that 30 per cent of this fund was placed in the hands of trustees for the payment, first, of the expenses of the litigation, when Mr. Erskine delivered you 11 per cent of this 30 per cent as a dividend of impounded premiums and then demanded and received from you 5 per cent back or 5-11ths of what you just got, for C. R. Street, Agent, for the payment of some expenses, which you didn't know even the type of, didn't that strike you as a most unusual situation. A. No more unusual than a lot of things that happened in Missouri.

Q.282. Oh, well, now, that may be. Those things happened in Missouri, as we find out. A. Well, this isn't a criticism of Missouri. I think it is a great state and I love to go there, but they are awful funny about some things.

Q.283. Did you go back there recently? A. I haven't been there this year, but I am there every year.

Q.284. If it hadn't have been a Missouri situation you would have thought it was most unusual? A. Oh, yes, I would have. If it hadn't been that whole picture that was in the background I would have been quite curious.

Q.285. The fact it was a Missouri situation is the only thing that kept it from striking you as most unusual? A. That is a little unfair way to put it.

Q.286. Isn't that the way you put it? A. No, sir.

Q.287. Well, put it your way. A. Not quite.

Q.288. Put it your way. A. Again let me say that I was prepared for anything in Missouri and to accept it without question from a reliable source, and I con-

sidered that Mr. Street was a reliable source and that Mr. Erskine was a reliable source and Mr. Folonie.

Q.289. And were you willing for anything to be done in order to get rid of the Missouri litigation? A. That is another story. In all the years that I have been in the insurance business, I have never known insurance companies to directly or indirectly attempt to influence a legislature or a court.

Q.290. In the early part of 1939 you learned through the press, did you not, that over $400,000.00 of impounded premium money and other funds collected had been used to corrupt Thomas J. Pendergast and others in Missouri, didn't you? A. All I know is what the papers published.

Q.291. All right. A. I don't know what the facts are.

Q.292. Did you make any effort to ascertain whether or not any of the money from your companies had gone for that purpose? A. No, sir.

Q.293. Why didn't you? A. Why should I? I didn't authorize anything of that kind. I knew nothing about it. My interest was small. What could I have done?

Q.294. If you thought that one dollar of your money had been used for a corrupt purpose, didn't you feel it was your duty to try to find out? A. Well, that is a matter of ethics. I don't know but what I should.

Q.295. Did you? A. But I made no effort to find out. I just accepted it as another manifestation of Missouri, and I thought it would all wash out.

Q.296. In other words, you thought that insofar as it was a Missouri situation or being a Missouri situation, anything would be considered ethical? A. I never said a thing of that kind nor would I say so.

Q.297. Are you still doing business in Missouri? A. Yes, a small business. We have closed, I presume, a good many agencies in Missouri in the course of the last ten years, but we still have some representation here and there. There is a pride, you know, about being in states.

Q.298. You testified a while ago, if I understood you correctly, that this litigation had reached such a point that you didn't care if you lost all of your impounded premiums? A. No, sir, I didn't make that statement.

Q.299. Well, what did you say? A. I said that I would have been willing to have it settled and out of the way, even if it cost us our impounded premiums in order to have the litigation over and done with.

Q.300. All right, why didn't you dismiss you lawsuit? You had brought suit down here. Why didn't you dismiss your lawsuit and just end it and wind it up? A. For the reason that it is of advantage to my company, as I believe, to join with other companies in a matter so important as Missouri litigation, whether or not I would do it if only my own interests were concerned.

Q.301. Was it important to your company? A. Was what important?

Q.302. This litigation. A. In its effect, yes, as it bore on rates.

Q.303. Then why did you permit it to be settled without knowing the terms of the settlement? A. Because it was in charge of men whom I trusted.

Senator Hollingsworth: In connection with this witness' examination, we offer in evidence Defendants' Exhibits 70, 71 and 72.

(Which said Defendants' Exhibits 70, 71 and 72, so offered in evidence, having been previously duly marked are in words and figures as follows:)

No. 93175
LTS 1484.32

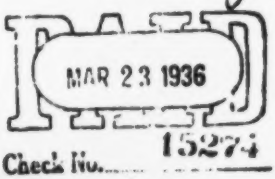
These checks represent 11% of the impounded premium as of May 1st 1935

Northern 84743.20
LTS 13466.59
98209.79
5% c/o.

84743
84743
5 4 1 7 3

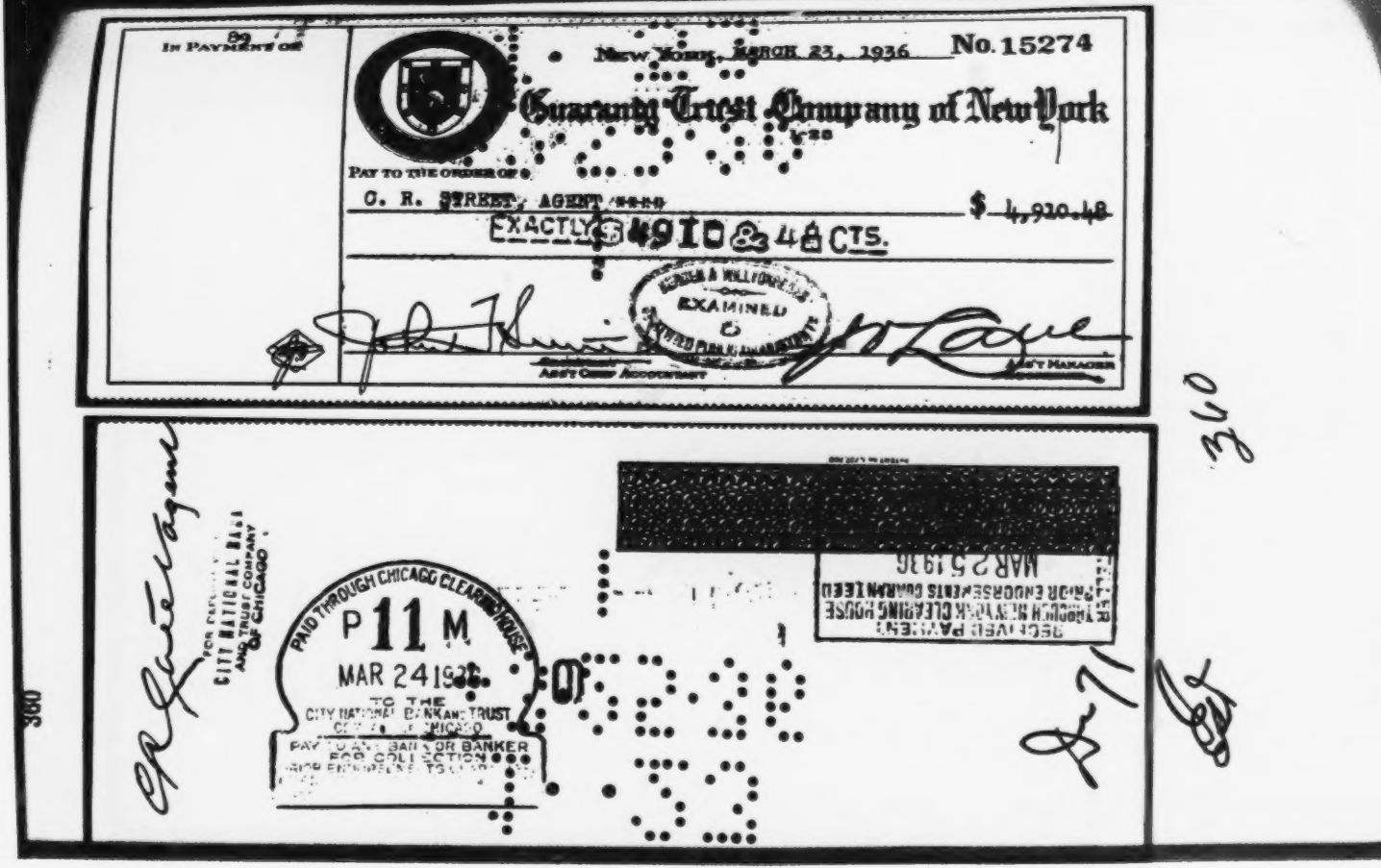
4910.48

C R Street, Agent



Check No. 15274

D-70


IN PAYMENT OF
New York, March 23, 1936 No. 15274
Guaranty Trust Company of New York
PAY TO THE ORDER OF
C. R. STREET, AGENT
$ 4,910.48
EXACTLY $4910 & 48 CTS.
EXAMINED
ASST CHIEF ACCOUNTANT
ASST MANAGER
PAID THROUGH CHICAGO CLEARING HOUSE
P 11 M
MAR 24 1936
TO THE
CITY NATIONAL BANK AND TRUST
PAY TO ANY BANK OR BANKER
FOR COLLECTION
CITY NATIONAL BANK AND TRUST COMPANY OF CHICAGO
RECEIVED PAYMENT
MAR 25 1936
360

CS 20925
In Payment of
89

NEW YORK, MAR 24, 1936 No 1097

Bankers Trust Company
New York, N. Y.
1-102

Pay to the order of
NORTHERN ASSURANCE COMPANY, LTD. $673.33

EXACTLY $673.33 CTS

EXAMINED
3
CERTIFIED PUBLIC ACCOUNTANTS

Asst Chief Accountant

Asst Manager

361

34

X-72

GUARANTY TRUST CO. OF NEW YORK
23 MAR 25 1936
TRANS. DEPT.

Cross Examination by Mr. Bullitt.

XQ.304. Mr. Barbour, referring to Mr. Hollingsworth's inquiry as to why you didn't try to find out what went with your money after the newspaper publications about Pendergast, isn't it a fact that your company furnished to the federal district attorney in Kansas City for use before the federal grand jury, photostatic copies of all checks, entries on your books, and other memoranda concerning this money that was paid to Mr. Street? A. It is.

XQ.305. Isn't it a fact that all the photostatic papers that Mr. Hollingsworth has had in his hands and been showing to you were furnished voluntarily by your company to Mr. Hollingsworth in this litigation? A. Absolutely.

XQ.306. The $92,000.00 of impounded funds that he has referred to represented how many years accumulation for your two companies? A. There were two impoundings there. Now, I don't know without reference.

XQ.307. To refresh your recollection, wasn't it the impoundings of five years, from 1930 to May 1, 1935? A. Well, there were two impoundings, and my recollection is that this was the last one, the last period.

Mr. Berger: He has reference to the old restitution case.

XQ.308. (By Mr. Bullitt) Look at the photostatic copies that Mr. Hollingsworth has been asking you about and see if that refreshes your memory. A. This says here that these represent impounded premiums as of May 1, 1935.

XQ.309. How many years impoundings is that an accumulation of? Five years, isn't it? A. I don't know. I would have to look at my record.

Senator Hollingsworth: The record would show.

Mr. Berger: The suit started and the injunction provided that the impoundings became effective June 1, 1930.

XQ.310. (By Mr. Bullitt) What percentage of your business in the United States was your Missouri business of the Northern Assurance and the London and Scottish? A. I should think roughly 2 per cent.

Mr. Bullitt: That is all.

Senator Hollingsworth: That is all.

(Witness excused.)

Pursuant to the foregoing stipulation, the following deposition was taken before Anna Brandt, Notary Public in and for Kings County, New York:

O. E. LANE, of lawful age, being produced, sworn and examined on behalf of the defendants, deposeth and saith:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. O. E. Lane.

Q.2. Mr. Lane, where do you live? A. Westtown, Chester County, Pennsylvania.

Q.3. What is your connection with the Fire Association of Philadelphia group? A. I am president of those companies.

Q.4. Were you president of that group of companies in 1935 and 1936? A. I was.

Q.5. What constitutes the Fire Association of Philadelphia, the Lumbermen's, the Reliance and the Victory? A. That is correct. I would add, however, that the Victory and the Reliance were merged in 1934.

Q.6. And which went out of existence, the Reliance or the Victory? A. Neither of them. As I understand it, the corporate existence of Victory was merged into the Reliance. The Reliance is the continuing operating company. I presume that is what you mean.

Q.7. That is what I mean. And when was that merger? A. Well, it was during 1934.

Q.8. You were familiar in a general way with the pendency of the Missouri rate litigation, were you not? A. Yes.

Q.9. Who was in active charge of that for the companies? A. Well, the business in Missouri is handled through our Western Department located in Chicago, the manager of which is A. F. Powrie.

Q.10. Do you know that the Subscribers' Actuarial Committee in Chicago was managing the litigation? A. Yes.

Q.11. In 1935 did you learn that negotiations were being conducted for a compromise of this litigation? A. Yes, from the press.

Q.12. When that compromise agreement was signed, did you learn of the terms and provisions of it? A. In a general sense, I did.

Q.13. Did you know that 20 per cent was allocated to the policyholders? A. Yes.

Q.14. And that 30 per cent was placed in the hands of Folonie and Street as trustees? A. Yes.

Q.15. And that 50 per cent was to go out right to the companies? A. Yes.

Q.16. And did you know that out of this 30 per cent the expense of the litigation was to be first paid and the balance— A. (Interrupting) I didn't know the detail of that, sir.

Q.17. Well, do you remember that is a general proposition? A. I knew it as I knew these other facts relating to disposition of these impounded funds. I knew it from what I read in the insurance press.

Q.18. And you did know that Folonie and Street were trustees of the 30 per cent fund? A. Yes.

Q.19. Did you know in a general way the extent of the impounded premiums in Missouri? A. As to my company?

Q.20. No, as to all companies? A. No.

Q.21. As to your company, of course, your records show? A. Well, the records showed, but I didn't carry it in my mind as a figure, sir.

Q.22. Mr. Lane, this settlement was signed on May 18, 1935. Did you know anything about a fund of $100,500.00 being raised for any purpose in connection with that compromise? A. I did not.

Q.23. At about that time. You have since learned that that was done, I believe? A. Well, I have learned about it.

Q.24. Through the press? A. Through the press and discussion of it.

Q.25. Was that your first information as to that $100,000.00? A. Yes.

Q.26. You had no information prior to that time? A. No.

Q.27. After the compromise agreement was made, you knew that a decree was entered in the federal court, did you not? A. Well, I knew it as a matter of hearsay. I didn't know it by any other means.

Q.28. Did you get a copy of the declaration of trust signed by Street and Folonie with regard to the 30 per cent? A. I personally never saw such a document.

Q.29. You never saw it? A. I was ill at that time, sir, confined to my home, approximately that time.

Q.30. Who in your office would know that or learn those facts during your illness? A. Why, those matters in connection with that litigation and compromise would

have come before Mr. Powrie at Chicago. He would have reported them in a general way to the head office at Philadelphia.

Q.31. Do you recall that in 1936 the trustees remitted out to the companies out of the 30 per cent fund a dividend of 11 per cent? A. Why, I can't answer that affirmatively or negatively in the form in which you put it because I didn't know the fund out of which any remittance that came to our companies was drawn.

Q.32. But you knew you did receive a dividend of 11 per cent? A. I knew on report from the manager of the western department that we had received moneys from the people who had the litigation in charge in our behalf.

Q.33. Well, didn't you know that you had also received the 50 per cent from the custodian? A. That was received at various times in various amounts.

Q.34. But when you got the 11 per cent you had received from the custodians your 5 per cent, less a small amount, I believe, withheld? A. Now, I can't answer. I don't know. I don't know the detail of that because the detail was handled in Chicago.

Q.35. I meant to say 50 per cent when I used 5 per cent. You knew Charles R. Street? A. Yes.

Q.36. Did Mr. Street ever talk with you about your companies paying to him as agent 5 per cent of the impounded premiums for any purpose? A. No; he talked with me about expense money which he said was required, but not in the form in which you asked the question, sir.

Q.37. All right, when did you talk with Mr. Street? A. In April, I think it was, in 1936.

Q.38. And where did you talk to him? A. I think at White Sulphur Springs, West Virginia, or Virginia, I don't know which.

Q.39. Was there some kind of an insurance men's meeting? A. Yes, it was at the meeting of the Western Underwriters' Association.

Q.40. Did Mr. Street talk to you alone? A. I can't recollect definitely. He talked to me, I would say, apart. He talked to me in the sense in which I understand your question, he talked to me alone.

Q.41. And did he bring up the subject? A. Yes.

Q.42. What did he say to you? A. He asked me if our companies would be willing to advance money for needed legal expenses and I told him that we would.

Q.43. Did he tell you to whom the legal expenses were to be paid? A. He did not.

Q.44. Did he tell you anything about the amount? A. No.

Q.45. Did you ask him how it was that he needed money for legal expenses when he as co-trustee with Folonie should have sufficient amount? A. No.

Q.46. Why didn't you? A. Why, I never gave it a thought.

Q.47. You did know at that time that 30 per cent was held by Street and Folonie as trustees for that purpose? A. I knew from the papers, as I have stated a moment ago, that that was the situation, but I didn't know the legal status of those funds or their availability.

Q.48. But you knew that they had money for that purpose? A. I knew nothing about the purposes that the managers of this litigation had at that time, other than those that had been stated publicly.

Q.49. Had Street ever talked to you about that contribution at any time before White Sulphur? A. No.

Q.50. Did he tell you that the other companies would be called upon for a similar amount? A. No, not that I recollect.

Q.51. Did he tell you anything about the amount involved? A. No.

Q.52. Or necessary? A. No.

Q.53. Did you know that his assessment of all of the companies would amount to $450,000.00? A. I did not. I didn't attempt to calculate it. As I tell you, I never gave the transaction a thought.

Q.54. Did you make any memorandum of the conversation at that time? A. No, not within my recollection.

Q.55. Where were the checks issued for the payment of this fund? A. They were issued in Chicago, I understand, subsequent to these conversations.

Q.56. Well, did you advise Mr. Powrie? A. I think he advised me, sir.

Q.57. What did he tell you? A. Well, he told me that he had sent Street, I think, an aggregate of seventeen hundred and eighty odd dollars and that these moneys were for legal expenses and that they would be accounted for by Street subsequently.

Q.58. Did you then advise Mr. Powrie what Mr. Street had told you about? A. I don't recollect that I ever advised him or spoke to him about the matter at all.

Q.59. I hand you Defendants' Exhibit 30, which has heretofore been identified, which purports to be a letter from C. R. Street of April 27, 1936, addressed to "Dear Abe." You would recognize "Dear Abe" as Mr. Powrie, would you not? A. That is right.

Q.60. And will ask your attention to the last paragraph and especially this part of it: "After the plan was changed I left you for the last and then held it over in order to explain it to our friend Lane, which was done at White Sulphur. He told me to tell you to do as the others had done and it would be all right with him." Do you know what plan it was that he refers to in that letter as having been changed? A. No, sir.

Q.61. Did he mention to you anything about any former plan? A. No.

Q.62. Did you know there had been any plans of any kind? A. No.

Q.63. Had you ever been consulted about this matter before his meeting with you in White Sulphur? A. No, I can't say that Street ever consulted me about the matter in a personal sense, save on the one occasion at White Sulphur?

Q.64. Did you tell him to tell Mr. Powrie that it was all right for him to go ahead and make this payment? A. I can't recollect the form of my assent to the proposal that he made to our companies for advance money for legal expenses; whether it was in precisely that form or not, I can't recollect, sir, but I assented that we would do what he asked us to do, which was to forward that seventeen hundred eight odd dollars. I didn't even know or realize what the sum would be at that time.

Q.65. Do you recall him telling you that he wanted these checks to C. R. Street, Agent? A. No.

Q.66. When did you first learn that they were made to C. R. Street, Agent? A. I wouldn't have known it until you assert that they were so made, that is, I wouldn't know how the check had been drawn or how the payee had been described.

Q.67. You have since learned through the press, have you not, that some four hundred odd thousand dollars was paid to Thomas J. Pendergast in Missouri for a corrupt purpose, have you not? A. I have read in the press certainly that money was paid to Pendergast.

Q.68. Have you made any inquiry to learn whether or not any of your money went for that purpose? A. No.

Q.69. I mean your companies' money when I speak of you. A. No. I understand what you mean.

Q.70. Why haven't you? A. Because the matter was in the hands of people that I deemed to be competent.

Q.71. Who? A. To represent us. The committee out there that was in charge of this whole litigation.

Q.72. The chairman of the committee is the one who was supposed to have done the corruption. A. Well, he apparently was.

Q.73. Did you know whether or not the other members or the committee might have had anything to do? A. I didn't know what he had done.

Q.74. You never undertook to find out? A. No more than had been disclosed by the public press, no.

Q.75. Aside from your one conversation with Mr. Street in White Sulphur, did you have any further conversations with him at any time about this matter? A. No.

Q.76. Have you told us the full extent of your knowledge concerning it? A. Yes.

Q.77. Since this happened have you had occasion to go through your files for the purpose of trying to find out— A. (Interrupting) Yes.

Q.78. (Continuing) —whether or not your files might reflect anything? A. Yes.

Q.79. Do you have any files other than the photostatic copies which you furnished to the federal grand jury? A. I can't identify all of the papers in that file you have in your hand, but we gave to the federal district attorney all of the pertinent matter that passed.

Q.80. Is there anything else in those files that refers to this Missouri compromise, I mean other than— A. (Interrupting) Yes, there is correspondence there, sir, regarding the sums of money that came after the compromise was carried forward.

Q.81. Will you look through this file which has been handed me by Mr. Berger? A. I have never seen these documents before this moment.

Mr. Berger: Part of this file that Mr. Lane is looking at came from the western department, Mr. Powrie's office.

A. Mr. Hollingsworth, I observe this letter which transmitted the seventeen hundred odd dollars that is referred to here, was dated on March 13th, whereas, my conversation with Mr. Street was in April sometime,

the subsequent month. I didn't look at the date of the facsimiles of checks because I had never seen them.

(Whereupon, discussion was had off the record.)

Q.82. Now, Mr. Lane, possibly if you will refer to the copy of the letter of March 12, 1936, from Mr. Powrie to you, which has heretofore been marked Exhibit 27, it may straighten you out as to that $1,700.00 check. A. Yes, I saw this letter. I remember this letter.

Q.83. Mr. Powrie in Chicago advanced some $1,700.00 before your conversation with Mr. Street in April? A. Well, you state that. Apparently from this record he must have. I don't know that he did.

Q.84. Well, the letter addressed to you from him shows that to be a fact. A. Well, I knew, sir, to get at the nib of this thing, I knew from this letter that following apparently my conversation with Street that he had talked to Powrie and that this check and similar checks possibly for the other companies had passed. I didn't know the form of the payee, which you had asked me. I want to be as responsible as I can, is the reason I undertake to make the statement. You asked me to identify all this. I haven't gone through all of it.

Q.85. I just wanted to refresh your recollection. Now, I believe you told me a while ago you had gone through your files. A. In a general way, yes, sir, but may I make a statement there that the files pertaining to this Missouri litigation in this company's office were incomplete. Part of it, the great majority of it being, of course, at Chicago in the custody of Mr. Powrie. Only touching the matters of general import would the files in my office yield anything. Now, I have been through those files since the compromise was talked of and publically set forth in the newspapers, and there is nothing, so far as I am aware, in our files, and there is nothing that you are not entirely welcome to.

Q.86. I understand that, but what I want to ask you now is— A. (Interrupting) And I would add this: That they have not been stripped.

Q.87. I understand that. Now, what I want to ask you now is whether there are any letters or correspondence in there that refers to these checks? A. Not within my knowledge.

Q.88. Other than this? A. Other than what you have in your possession.

Q.89. That is what I meant to get at. A. Nothing within my knowledge, either here or at Chicago, because

as is disclosed there, I asked them out there on occasions when I would be there what this situation was. As a matter of fact, I never saw the bookkeeping of this matter until I think it was in June of this year, because I was curious to see if I could divine what had happened to us, where our money had gone. I don't understand to this day where it went.

Q.90. Mr. Lane, did you go to Kansas City this year? A. No.

Q.91. In regard to this matter? A. Not in connection with the federal district attorney.

Q.92. Milligan? A. No, I did not.

Senator Hollingsworth: I think that is all.

Cross Examination by Mr. Bullitt.

XQ.93. Mr. Lane, your companies have furnished to the federal grand jury at Kansas City photostatic copies of everything regarding the payments of these moneys by you to Mr. Street. Did your company furnish to the federal district attorney at Kansas City the original checks and photostatic copies of all of the entries on your books relating to the payments by your companies to Street of these funds for expenses? A. Yes, sir, we did. I gave instructions to the Chicago office that they furnish everything that the federal district attorney asked for.

XQ.94. And didn't you do that immediately after it came out in the newspapers that the district attorney was investigating this so-called Pendergast scandal? A. Yes, we cooperated in every possible way.

Mr. Bullitt: That is all.

Senator Hollingsworth: That is all.

(Witness excused.)

Senator Hollingsworth: Let's adjourn these depositions until two o'clock this afternoon.

Whereupon, the further taking of depositions in said case was adjourned until two o'clock p. m. of said Monday, July 31, 1939.

AFTERNOON SESSION, MONDAY, JULY 31, 1939.

Pursuant to adjournment as aforesaid, at two o'clock p. m. of said Monday, July 31, 1939, came again the same parties, and the taking of depositions continued as follows:

Pursuant to the foregoing stipulation, the followng deposition was taken before Joseph F. Shea, Notary Public in and for Kings County, New York:

WALTER F. BRADY, of lawful age, being produced, sworn and examined on behalf of the defendants, deposeth and saith:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. Walter F. Brady.

Q.2. Mr. Brady, where do you live? A. Larchmont, New York.

Q.3. Is that a suburb? A. That is right.

Q.4. Cf the City of New York? A. Yes.

Q.5. What is your connection with Merchants Fire Assurance Corporation of New York? A. Vice-president and secretary.

Q.6. What was your connection with this company in 1935 and 1936? A. In 1935 and '36 I believe I was secretary.

Q.7. You were secretary? A. That is right.

Q.8. Of course, you were familiar in a general way with the Missouri litigation? A. Yes, sir.

Q.9. Are you the man from your office that had supervision of whatever was done in your office? A. I am, sir.

Q.10. Do you recall about the time that the compromise agreement was entered into? A. You mean when I first had knowledge of it?

Q.11. Yes. A. It seems to me the early part—that is definitely the early part of 1936. We had heard rumors from time to time during the past four years that it was in the process of being settled.

Q.12. Did you learn that a stipulation or agreement for settlement and compromise of the case had been executed in May of 1935? A. I can't say that I did, sir.

Q.13. Then do you recall that 1935 went on and 1936 came and a federal court decree was entered pursuant to that? A. I don't recall that. All I recall is in January or around in February of 1936, sometime around there.

Q.14. Then shortly after that a declaration of trust was executed by Mr. Folonie and Mr. Street in regard to certain funds? A. As I recall, whatever the agreement or compromise was, there was to be a fund set up of which the expenses of both sides in the litigation

were to be taken care of from it, but I don't recall the mechanics of it.

Q.15. Up to that time had any person discussed with you the payment of any money for expenses in connection with that litigation? A. You mean up to February of 1936?

Q.16. Yes. A. No; no, sir. Now, wait just a minute. I might just say this: I believe that during the past time we had contributed to our assessments to the Missouri Inspection Bureau, the assessments had been increased on account of the expenses that had been incurred.

Q.17. And you knew that the Subscribers' Actuarial Committee situated in Chicago was in active charge of the litigation? A. That is right, sir.

Q.18. Do you know Charles R. Street? A. I did not know him personally.

Q.19. Did you know who he was? A. Yes, I knew he was the vice-president of the Great American, and that he was the head of the committee and the one most active in it.

Q.20. After the settlement your company received its proportion of the funds from the custodian which was 50 per cent of the impounded fund? A. That is right. I think it was some thirty odd thousand dollars.

Q.21. Then after that I presume your company also received 11 per cent return from the 30 per cent fund? A. That is right, sir.

Q.22. At the time you received the 11 per cent distribution from the 30 per cent fund, was there anything said by any person to you in regard to contributing to an expense fund? A. Yes, sir.

Q.23. Who was that person? A. Mr. Erskine.

Q.24. Was he the first person that had called upon you for expenses other than these assessments which you mentioned sometime ago? A. He was, sir.

Q.25. How did Mr. Erskine communicate with you? A. Why, he came over and saw me.

Q.26. And came over where, now? A. 45 John Street, our home office.

Q.27. Mr. Erskine's office is where? A. Well, I believe he is associated with the Insurance Executive Association.

Q.28. That is in this building in which we are having this hearing? A. Yes, sir.

Q.29. About how far is your office from Mr. Erskine's office? A. Three and a half blocks.

Q.30. And was his sole purpose in calling on you to talk with you about contributing it to the expense? A. It was, sir. I might say he had with him the check for 11 per cent, the sole purpose of delivering it, a check for 11 per cent, and I assume with the sole purpose of delivering the check, and I assume asking us to contribute.

Q.31. Ordinarily a check of that kind would have come to you through the mail? A. Not necessarily. May I just say another thing? This was rather unusual. We are not in the habit of having litigation of this kind.

Q.32. But a check that would be remitted to you through Mr. Erskine would ordinarily have come to you through the mail, wouldn't it? A. Well, I wouldn't say so. As I say, this was unusual.

Q.33. Well, this was unusual? A. That is right.

Q.34. And Mr. Erskine— A. (Interrupting) The whole case was unusual.

Q.35. So an unusual situation existed? A. That is right, sir.

Q.36. What was unusual about the manual act of delivery of a check, just because it was this litigation or any other litigation? A. Well, we have from time to time plenty of checks delivered to us manually.

Q.37. By Mr. Erskine? A. It was just more convenient, I assume.

Q.38. How far is your office from this building? A. Three and a half blocks.

Q.39. At the time that Mr. Erskine came in, who was present when you talked with him? A. I think I was alone, sir.

Q.40. Mr. Brady, will you tell me as fully as you can the conversation between you and Mr. Erskine? A. Well, as I recall, Mr. Erskine came in and he said he had this check for 11 per cent to pay for the expenses. When we heard what the compromise was, that the company, although we were to get out of that 50 per cent, we had to pay the agents' commissions, that did not leave the companies 50 per cent. In effect we might have 25 per cent. We thought the compromise was far from a fair one. As I recall, the Master had already rendered a favorable report to the companies. However, there was the fact we were to get rid of the nuisance and expense in connection with carrying on this case, so when Mr. Erskine came in and said he had a check for 11 per cent

of this 30 per cent fund which we never thought we were going to get anything from, why, we naturally were a little elated because we thought it had all gone out the window, and when then he told us that there were some expenses, as I recall, and in looking on the premium, I think I wrote down "legal expenses." I mean it was for legal expenses, and it seemed to me just on thinking back that it was for expenses; the 30 per cent was to cover the expenses of both sides of the case, but it seemed to me there might have been other expenses, figured expenses that wouldn't come in under our court order. However, at the time we were going to collect 11 per cent, we were paying out 5 per cent, and we never thought we were going to see any of the 30 per cent at all, so that we were very pleased to get the money, and I think at that time Mr. Erskine said there might be a further distribution out of this 30 per cent fund.

Q.40½. Did you ask Mr. Erskine what the nature of these legal expenses were? A. No, but we had never asked the nature of any of the expenses we had contributed to.

Q.41. But you did know that the 30 per cent was to take care of the expenses of the litigation, did you not? A. Well, I assumed it was allowed by the court.

Q.42. From what you knew, that that was the purpose of it? A. Well, I didn't know, for instance, whether or not we would be reimbursed for the funds we had contributed through the Subscribers' Actuarial Committee heretofore. I don't know now, for that matter.

Q.43. I know, but whether you would be reimbursed for any expenses theretofore made, you did understand that the 30 per cent was to pay the expenses of litigation? A. The litigation, I assume, as allowed by the court.

Q.44. Did you read the trust declaration? A. I don't believe I did, sir.

Q.45. And the other papers? A. I don't believe I did.

Q.46. Did you know that the extent of the impounded premiums for all companies at that time was in excess of $9,000,000.00? A. I thought it was somewhere between $7,000,000.00 and $9,000,000.00. I don't know whether $9,000,000.00 included that in the state court or not.

Q.47. You understood from Mr. Erskine all companies were being called upon to contribute 5 per cent

at the time or about the time they received the 11 per cent check? A. I didn't know he was asking all, but we assumed—I don't know whether we even asked him that.

Q.48. But you assumed that to be a fact? A. We assumed if we were paying ours we were just going along.

Q.49. Didn't it occur to you a most unusual situation that you were being called upon to contribute 5 per cent of this 30 per cent fund for legal expenses? A. No, it didn't.

Q.50. You never undertook to inquire what the nature of the legal expenses was? A. No, sir, we did not.

Q.51. Mr. Erskine didn't volunteer to tell you that? A. No, sir, other than it was legal expenses.

Q.52. Did you ask him why it was not taken out of the 30 per cent fund instead of being assessed directly? A. I don't know whether we did or not, sir, to be honest; I don't know whether we did or not.

Q.53. Was there any further conversation between you? A. No, there was no further.

(Photostatic copy of memorandum, handed to the reporter, was marked for identification as "Defendants' Exhibit 73, EFM.")

Q.54. I hand you Defendants' Exhibit 73 and ask you to state if that is a photostatic copy of a memorandum made by you. A. That is a photostatic copy of a memorandum made by myself.

Q.55. Is everything on there, with the exception of the stamp, your handwriting? A. No, sir, this initial here is not mine and this was not mine (indicating). I wrote all of this (indicating), and the chief accountant, I called him up on the phone and the chief accountant of the company, I told him it was Mr. Erskine's of the Insurance Executive Association that we were delivering this check to. As I recall it, a check was delivered, so he wrote this memorandum on it. The rest is mine.

Q.56. Mr. Erskine waited there in your office for this check to be prepared? A. As I recall, he did, yes, sir.

Q.57. What were the mechanics of getting that done? A. Well, I sat in my office and called up the chief accountant.

Q.58. Where was the chief accountant? A. Down on the floor below, and told him we were getting a dividend of 11 per cent from this fund which we had never expected anything from, but there were apparently some additional legal expenses that had to be paid and we

would have to draw a check for 5 per cent; that it might be at some future date there would be an additional distribution of the 30 per cent.

Q.59. You told him there were apparently some legal expenses? A. That is right.

Q.60. You didn't know the nature of them, of course? A. That is right, sir.

Q.61. Why didn't you turn there and ask Mr. Erskine what the nature of these expenses were? A. Well, sir, I mean, when now that I look back, we might, of course, examined them, but in effect the thing was this: We could never understand how there could ever be 30 per cent of a fund that was $9,000,000.00, which would cost $2,700,000.00. So 5 per cent seemed, after all, only one-sixth of 30 per cent, so it was a very small amount, comparatively speaking.

Q.62. If you thought the 30 per cent was intact, did you ask him when the balance would be paid? A. No, sir. He said that there might be a distribution at some later date.

Q.63. So you knew then that expenses were being paid out of the 30 per cent? A. Certainly. I don't know that we knew it. We assumed it.

Q.64. And you had paid some legal expenses, I believe I understood you to state, through assessments to the Actuarial Committee? A. I believe so.

Q.65. What were the extent of those, if you know? A. Well, I just don't recall offhand, but it seemed to me that sometime when these assessments were made they would say the rate had been increased some over last year, which was due to the expenses in connection with the Missouri litigation.

Mr. Berger: You said in the Inspection Bureau.

A. It was the Inspection Bureau.

Q.66. (By Senator Hollingsworth) I think my question was correct. I said that it was paid through assessment in money to the Actuarial Committee.

General Bullitt: No, it was never the Actuarial Committee. The Actuarial Committee never collected a cent.

Senator Hollingsworth: I know we are quibbling over the same thing. The money went to the Actuarial Committee.

General Bullitt: No, they never handled it at all.

Senator Hollingsworth: You are right. I am confused.

General Bullitt: Get that straightened out.

Senator Hollingsworth: I will try to keep that.

Q.67. Now, did Mr. Erskine state to you any reason for making the check to C. R. Street, Agent? A. Only that as far as we knew that Mr. Street had been mixed—I mean had been handling not only this case, but, as I recall, the old Missouri refund case; that he was the one that seemed to be the head of the Subscribers' Committee of the Actuarial Committee.

(Photostatic copies of check and cash book, handed to the reporter, were marked for identification as "Defendants' Exhibits 74 and 75, EFM.")

Q.68. I hand you Defendants' Exhibit 74, a photostatic copy of a check, and ask you to state if that is the check that you caused to be issued? A. That is the check I caused to be issued.

Q.69. That is a photostat of the endorsements? A. Yes, a photostat of the endorsements.

Q.70. I notice above the endorsement of C. R. Street, Agent, the words "legal expenses *re* Missouri impoundings"? A. That is right.

Q.71. Do you know whose handwriting the words "legal expenses for Missouri"— A. (Interrupting) Yes, sir, that is the cashier.

Q.72. The cashier? A. Of the Merchants Fire Assurance Corporation.

Q.73. I now show you Defendants' Exhibit 75 and ask you to state if that is a copy of your general cash book for the period of March, 1936? A. That is, sir.

Q.74. I see an entry in there, "C. R. Street, legal." What are those words? A. Missouri impound premiums. It is "Legal Expense Account Mo. imp. prem." That is for—

Q.75. (Interrupting) That is what? A. Legal expense, Missouri impounded premiums.

Q.76. Isn't that "legal fee"? Let's get those words. Isn't that "legal fee"? A. The funny thing, you see, there is a period here, see (indicating).

Q.77. Well, isn't that "legal fee account"? A. I don't know why they should put a period after it.

Q.78. Can you make out those words with any degree of certainty except the word "legal"? A. The Missouri impounded premiums, I can make that out very definitely.

Q.79. Any other entries on the books in regard to that? A. Here, "Missouri refund expense."

Q.80. Missouri refund expense? A. Yes. This is the agency record.

Q.80½. Was there any further conversation between you and Mr. Erskine there at that time? A. Not that I recall, sir.

Q.81. You have since learned through the press that some $450,000.00 of money delivered to Mr. Street was used for corrupt purposes, haven't you? A. I have, sir.

Q.82. Have you made any effort to determine whether or not any of the money which you gave to Mr. Street under this check, Defendants' Exhibit 74, went for that purpose? A. All that I recall is that is a photostatic copy of our check in connection therewith which was presented of our own accord through our attorneys.

Q.83. But have you made any investigation to determine whether any of this money went for the purpose of paying corruption money to Tom Pendergast and others? A. Do you mean did we ask Mr. Street?

Q.84. Have you asked anybody? A. We have not asked Mr. Street because he is dead and we didn't ask anybody else.

Q.85. Have you asked anybody else? A. No, sir.

Q.86. Made any investigation of any kind? A. No, sir.

Q.87. Why haven't you? A. Well, in view of the fact there are some 137 other companies involved in this thing, and it has all been in the press, we assumed our attorneys have been taking care of it, the attorneys for the company.

Q.88. The attorneys for the company, what did they have to do with the matter before the grand jury and the matter of corruption of Pendergast? You didn't have attorneys employed in connection with that, did you? A. I don't quite understand your question.

Q.89. What attorneys did you think were investigating for your company after the story of corruption came out? A. I assumed there were 137 other companies contributed to this fund, this 5 per cent, and I assume those are the same companies that were interested in the Missouri litigation, and I assumed that our attorneys that were handling this Missouri litigation were also handling this phase of it.

Q.90. Have you made any inquiry of your attorneys regarding this matter? A. No, sir, we have not.

Senator Hollingsworth: We offer in evidence the Exhibits from 73 to 75, inclusive.

Mr. Murphy: Are you offering the books, the photostatic pages?

Senator Hollingsworth: Yes, that is it.

Mr. Murphy: Why don't you stipulate as to that and save the record?

Senator Hollingsworth: I can't use that, Mr. Murphy, definitely.

(Which said Defendants' Exhibits 73, 74 and 75, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

C R Shell Oper 5

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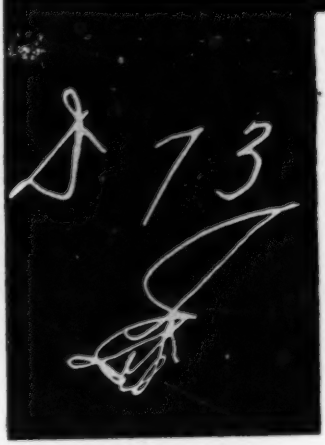
MERCHANTS FIRE
ASSURANCE CORP'N OF N. Y.

25

D

Endorsed



MERCHANTS FIRE ASSURANCE CORPORATION
OF NEW YORK

No. 23784

New York MAR 25 1936 19

Pay to the order of La Salle Street Trust

$ 3012.99

THE SUM OF $ 3012.99¢ Dollars

To Guaranty Trust Company of New York
New York N.Y.

MERCHANTS FIRE ASSURANCE CORPORATION OF NEW YORK

AS OFFICER

AS OFFICER

For Deposit with City National Bank & Trust Company of Chicago

Tyler Systems
Per Thurston Johnston
E.R. Clark Agent

PAID THROUGH CHICAGO CLEARING HOUSE
P 11 M
MAR 26 1936

MAIL TELLER

N.C. LENFESTEY CASHIER N.Y.

381

Defendants' Exhibit No. D 75 is a page from the general cash book of the MERCHANTS FIRE ASSURANCE CORPORATION OF NEW YORK for the month of March, 1936, which shows, among other things, entry on March 25 of check No. 23784, to C. R. Street, Legal Fee Acc't Mo. Imp. Prem. $3,012.99 under column marked "cash," and $3,012.99 under column marked "Agency Balances"—"Direct."

Q.91. When you wrote this check or had it written to C. R. Street, Agent, whose agent was he? A. Well, what we had thought was that it was just going to be a name for a bank account and—

Q.92. (Interrupting) Whom did you think the money was going to? A. I thought it was going to attorneys.

Q.93. To attorneys? A. That is right.

Q.94. What attorneys? A. Well, I used to pick up the paper every now and then in connection not only with the Missouri impoundment, but every now and then you would see another set of attorneys suing somebody for the part of the fees that were to be allowed by the court or other ways, and I assumed we might have had attorneys doing outside work that the court wouldn't allow.

Q.95. And you intended for Street to pay this money to your attorneys? A. Well, when you say "our expense," when you say as "our attorneys," we naturally assumed it was legitimate expense. We certainly never thought that anybody would be crazy enough to use it for anybody for that purpose.

Q.96. And you handed it to Street or Erskine for that purpose? A. That is right to pay our share.

Senator Hollingsworth: That is all.

Cross Examination by Mr. Bullitt.

XQ.97. Did you or any officer of your company authorize Mr. Street to commit any fraud or to pay any money to any other than these lawyers? A. We certainly did not.

Mr. Bullitt: That is all.

Senator Hollingsworth: That is all.

(Witness excused.)

Pursuant to the foregoing stipulation, the following deposition was taken before Joseph F. Shea, Notary Public in and for Kings County, New York:

F. J. BREEN, of lawful age, being produced, sworn and examined on behalf of the defendants, deposeth and saith:

Direct Examination by Judge Henson.

Q.1. You are Mr. Breen? A. Yes.

Q.2. Give your full name. A. Frank J. Breen.

Q.3. Mr. Breen, what is your connection with the Standard Fire Insurance Company of New Jersey at this time? A. President.

Q.4. What was your connection with that company in 1935 and 1936? A. Well, in 1935 I was general agent out of Chicago and during 1936 I was made president.

Q.5. What time in 1936 were you made president? A. March.

Q.6. How early in March, the first day? A. I couldn't tell you that.

Q.7. You don't remember. Mr. Breen, I am going to show you Grand Jury's Exhibit No. 142. I will submit that to Mr. Berger. I will ask you to look through that and see if that is all the records in your office relating to the payment by your company of 5 per cent of your impounded premiums. Take your time and look through it. A. Well, I would say yes, it is a photostatic copy of our records.

Q.8. Your company was a plaintiff in one of these rate cases in Missouri, the plaintiff in a federal case, wasn't it? A. Yes.

Q.9. One of 130 cases. Do you know in a general way what your impoundments were up to May 1, 1935? You may look at that caption if you care to. A. $57,000.00.

Q.10. That litigation was compromised, wasn't it? A. So I understood.

Q.11. What were the terms of its compromise? A. Well, from the insurance journals and things of that kind there was 50 per cent to go to the companies, 20 per cent to the assureds and 30 per cent for expenses.

Q.12. You understood that right after it was made? A. From the insurance journals.

Q.13. You never had any contrary information even now, have you? A. No.

Q.14. Knowing that to be the situation, what else did you hear or what further contact did you have with reference to this impounded premium? A. Practically none. The Standard is isolated from New York City and

our general information comes from the insurance journals. We don't get a chance to associate with them.

Q.15. Where is your company located? A. Trenton, New Jersey.

Q.16. And was in 1935 and 1936? A. Yes, sir.

Q.17. And at the instigation of the suit, to begin with? A. Yes.

Q.18. Who was handling this litigation for you? A. Well, the committee.

Q.19. What committee do you mean? A. Well, I wouldn't know just what name. It was under the supervision of the Actuarial Committee, I presume.

Q.20. Was it the Subscribers' Actuarial Committee out of Chicago that was handling it? A. No, I think there was a sub-committee of which Mr. Street had charge.

Q.21. You knew Mr. Street? A. Yes.

Q.22. Knew him as the man who was in charge of this litigation? A. Yes.

Q.23. Did he ever discuss this compromise with you? A. No, sir.

Q.24. If he made a compromise then, he made it as your agent and it was agreeable to you, whatever it was? A. Well, I don't know about that.

Q.25. You never protested the agreement and haven't to this day, have you? A. Well, the only thing we know, as soon as anything didn't seem right about it, we would assume our attorneys were protesting it.

Q.26. So far as you know, he was handling it, and you were willing that he should handle it? A That is right.

Q.27. How well did you know Mr. Charles R. Street? A. Well, I didn't know him intimately. I knew him for many, many years, probably to say "Hello" if I passed him on the street or saw him at a meeting.

Q.28. You have said that you didn't discuss this compromise with him before it was made? A. No.

Q.29. But that the compromise was agreeable to your company? A. Yes.

Q.30. Did you discuss it with him afterwards? A. No, sir.

Q.31. Did you discuss it with any insurance executives after it was made? A. Oh, I may have miscellaneously here or there with some friend that I met, but never an official.

(Photostatic copy of check, handed to the reporter, was marked for identification as "Defendants' Exhibit 76, EFM.")

Q.32. Were you in a conference with others in New York or Hartford who discussed this compromise before it was made? A. No, sir.

Q.33. I will show you what has been marked as Exhibit 76 and ask you if you recognize that as a photostat of a check with its endorsements, issued to C. R. Street, Agent, March 24, 1936? A. That is correct.

Q.34. That is correct, is it? How did that check come to be issued? A. We were advised that—

Q.35. (Interrupting) By whom were you advised, please? A. Mr. Paul Haid.

Q.36. Paul Haid, all right. A. That we were to get a check for the return of 11 per cent.

Q.37. 11 per cent. Where was it coming from? A. Well, I assumed it was a return of the expense money.

Q.38. That was not needed for expense, return of the 30 per cent, as you would say? A. Yes, and in addition to that, we were to send a check for 5 per cent for legal expenses.

Q.39. Where was Mr. Haid when he told you this? A. He told me on the telephone.

Q.40. On the telephone. I notice in this file there is no letter of any kind from Street, Haid or anybody else? A. No.

Q.41. Do you say on oath that there is no such letter in your files down in your home office at Trenton? A. Yes.

Q.42. And the whole information you got was by Mr. Haid over the telephone? A. That is right.

Q.43. What did Mr. Haid tell you? A. Merely that he was sending us a check for 11 per cent dividend and he had to have back a check for 5 per cent for legal expenses.

Q.44. Did he explain what the legal expenses were? A. He said it was legal expenses for attorneys, I suppose.

Q.45. You got the 11 per cent check, didn't you? A. Yes.

Q.46. Whose check was that? Wasn't that Folonie's check and Street's as trustees? A. Yes.

Q.47. Then how did you come to make this check to C. R. Street, Agent? A. Under instructions.

Q.48. From whom? A. Mr. Haid.

Q.49. Did he explain further why it had to be to Street, Agent? A. No, sir.

Q.50. What did you say he said it was for? A. Legal expense.

Q.51. During the course of this litigation, the Western Rating Bureau had assessed you fellows for legal expenses, hadn't they, from time to time as this last witness testified? A. I don't know about that.

Q.52. You don't know that they had? A. No.

Q.53. But you knew that 30 per cent was for the legal expenses? A. Yes.

Q.54. Now, you got a check for 11 per cent. Didn't it occur to you as peculiar and unusual that they would ask you for a check for 5 per cent back? A. No, I wouldn't say—if we were getting a dividend of 11 per cent, they apparently wanted it to show that way, and if we were paying legal expenses, it ought to show that.

Q.55. Notwithstanding you understood that the 30 per cent was set aside for legal expense? A. We probably didn't give a lot of consideration, but our thought probably would be that the committee was faced with an immediate expense for payment. Although while it agreed to turn it over, I didn't know they had it.

Q.56. Did Mr. Haid tell you they needed it immediately? A. No.

Q.57. Where did you get the idea it was for immediate payment? A. If he asked us to send it, I just assumed they needed it.

Q.58. You gave this check to Mr. Street, Agent? A. We issued it that way.

Q.59. This check I mean, this Defendants' Exhibit 76? A. Yes.

Q.60. Whose agent was he, Mr. Street? A. Well, he would be the agent of that money, I would say.

Q.61. Was he your agent to spend that money as he pleased? A. Well, I wouldn't want to say that. He was supposed to spend it the way it should be spent.

Q.62. I know, but did you put any restrictions on how it should be spent? A. No, we didn't.

Q.63. Did you write any letter to limit it? A. We were being—as we thought, he was under supervision of the committee and they had O.K.'ed whatever he was doing and it was all right.

Q.64. Did you have anything from the committee saying that "this is all right to pay this"? A. No.

Q.65. Did you have any assurances from anybody that it was all right to pay it except Mr. Haid's assurance? A. That is right.

Q.66. That is all you had? A. Yes.

Q.67. Did you make any memorandum and put in your files in the office reciting this transaction? A. I wouldn't think so.

Q.68. Well, it is a habit in your company, isn't it, in matters of importance, to leave a memorandum of it? A. Well, the records show that the check came in and the check went out, so we had a record. Now, I may have taken some papers and taken my pencil and jotted down what we did. I wouldn't want to say I did or I didn't.

Q.69. It is most likely that you didn't? A. I wouldn't think so.

Q.70. You didn't have any letter from anybody? A. I wouldn't need it. The check would be properly endorsed.

Q.71. When the check came back, it would be tied up with the returned checks of that month? A. Yes.

Q.72. You would have to go into the vault some place to find it? A. The entry is on the books. We would undoubtedly have a file of Missouri litigation, and—

Q.73. (Interrupting) I think you would. A. And as I say, I may have taken my pencil and marked that on there.

Q.74. Who would have charge of that file, Mr. Breen? A. I personally did, myself.

Q.75. Can you think of any other witness that I could call who could satisfy me on this? A. No.

Q.76. You can't think of any other? A. No.

Q.77. Then I guess I will have to ask you to go back and make a search and come later. A. My reason for that is that I practically took care of that myself.

Mr. Berger: At the time you furnished these checks and books to Mr. Milligan for the use of the federal grand jury, didn't you look through your files to see whether there was any correspondence or not?

A. Well, we got a request for that, and we simply had our treasurer give whatever they asked for.

Q.78. (By Judge Henson) You did give what was asked for? A. Yes.

Q.79. They didn't ask for that memorandum, if you made one?

Mr. Berger: Yes.

A. If they did, we gave it. We gave them anything they asked for.

Q.80. (By Judge Henson) They didn't ask for letters or any other correspondence, did they? A. Well, I wouldn't say. I know we complied with anything they wanted. We don't have any letters that you haven't got there, other than I may have, as I say, taken my pencil and jotted down something.

Q.81. Look at this file. You haven't any letter there even transmitting that file as we have in these other grand jury exhibits, have you? A. No.

Q.82. How do you know that you got this file together and made all of that examination? Do you remember it? A. I have all of the papers handy and was keeping track of it.

Q.83. Then do you say here on oath that you have gone through that and that is all that you have? A. Well, we have miscellaneous—

Q.84. (Interrupting) How is that? A. We have miscellaneous papers in connection with the Missouri impound over a period of time.

Q.85. Why didn't the miscellaneous papers—

Mr. Berger (Interrupting): He said over the impound. Of course, they have a big file on transmitting there three months on impoundment.

Judge Henson: I wish you would let this witness take—

Mr. Berger (Interrupting): I don't think you are being quite fair.

Q.86. (By Judge Henson) Well, all right. What other or miscellaneous papers then are there that are not included?

Mr. Berger: Just a minute. I object to the form of the question as not being restrictive enough. The Missouri litigation has been going on since 1922, and this inquiry is restricted.

Judge Henson: You are right.

General Bullitt: Don't keep on arguing.

(Whereupon, discussion was had off the record.)

A. I will answer your question. We have no letter pertaining to any of these transactions.

Q.87. (By Judge Henson) Then do you say this includes everything you have relating to the pay-out of this fund there? A. Yes.

Judge Henson: I think that pretty well satisfies it.

Mr. Berger: He probably has a thick file on impounding.

Judge Henson: Yes, I know.

Q.88. Now, I suppose you have heard through the public press and otherwise since that time that something like $450,000.00 of insurance companies' contributions had been paid to Mr. Thomas J. Pendergast of Kansas City? A. Yes, sir.

Q.89. For corrupt purposes? A. Yes, sir.

Q.90. Have you gone through your records to ascertain whether any of this contribution included in this check of yours went into that corruption fund or not? A. Well, we wouldn't be able to tell.

Q.91. Have you made any inquiry at all of anybody? A. No, other than we assume that the committee handling it now will follow it through and make us a complete report. We can't know anything individually.

Q.92. All right, have you inquired of the committee as to whether that was true or not, that any of your funds went into that purpose? A. No.

Q.93. Have you inquired of your lawyers, any of them? A. No.

Q.94. On that subject? A. No.

Judge Henson: That is all.

Mr. Berger: I think that is all.

(Witness excused.)

Whereupon, the further taking of testimony in said case was adjourned until nine o'clock a. m. of Tuesday, August 1, 1939.

MORNING SESSION, TUESDAY, AUGUST 1, 1939.

Pursuant to adjournment as aforesaid, at nine o'clock a. m. of said Tuesday, August 1, 1939, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

Judge Henson: In connection with the testimony of Mr. Breen, I introduce Exhibit 76. I am sure all of the rest of our exhibits were introduced yesterday.

(Which said Defendants' Exhibit 76, so offered in evidence, having been previously duly marked, in words and figures, is as follows:)

THE STANDARD FIRE INSURANCE COMPANY
No 1011762

Trenton, N.J. March 24, 1936

PAY TO THE ORDER OF
ANY BANK, BANKER OR TRUST CO.
ALL PRIOR ENDORSEMENTS GUARANTEED

$ 2,891.08

TWO THOUSAND EIGHT HUNDRED NINETY-ONE 08 CTS. DOLLARS

Legal Expense

TO THE FIRST-MECHANICS NATIONAL BANK
OF TRENTON
TRENTON, N. J.

MAR 28 1936
FEDERAL RESERVE BANK
3-4 OF PHILADELPHIA, PA. 3-4

PAY ONLY WITH
BUTT NATIONAL BANK
AND TRUST CO.
OF CHICAGO

D 76

Judge Henson: Then I introduce the entire grand jury file, 142.

Mr. Berger: Don't you think maybe you had better have those marked for identification? In other words, if it gets out of this envelope we may lose them. Mark them right through.

(Instruments, handed to the reporter, were marked for identification as "Defendants' Exhibits 77, 78, 79, 80 and 81, EFM.")

Judge Henson: Now, I introduce grand jury file 142, which consists of Exhibits 77 to 81, both inclusive.

(Which said Defendants' Exhibits 77, 78, 79, 80 and 81, so offered in evidence, having been previously duly marked, are in words and figures, as follows:)

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	Impounded Premiums as of May 1, 1935	85 of Impounded Premiums
Standard Fire of New Jersey	$ 57,880.55	$ 2,891.08

Check Issued

Standard Fire of New Jersey	5/24/36	$ 2,891.08

United States
EXHIBIT 147
MAR 20 1939

d 77

Defendants' Exhibit No. D 78 is page 116 from the cash book of THE STANDARD FIRE INSURANCE COMPANY of New Jersey, among the entries of which, under date of March 24, shows check No. 101762, payable to C. R. Street, Agt., Legal Expense $2,891.02, and under column marked "Sundries" $2,891.02.

Defendants' Exhibit No. D 79 is page 65 from the Journal of the STANDARD FIRE INSURANCE COMPANY of New Jersey, which shows entries as follows:

"Missouri Impounded Premiums Held by Trustee—Expenses $2,891.02

Legal Expenses $2,891.02"

"To transfer amount of $2,891.02 from Legal Expense Account to Missouri Impounded Premiums Held by Trustee—Expense Account."

Defendants' Exhibit No. D 80 is Journal account of said STANDARD FIRE INSURANCE COMPANY of New Jersey entitled "Missouri Impounded Premiums Held by Trustee—Expenses" which, among other things, shows an entry on June 30, 1936, from Journal, page 65, charging the account with $2,891.02.

Defendants' Exhibit No. D 81 is Journal account page of STANDARD FIRE INSURANCE COMPANY of New Jersey, entitled "Legal Expenses," showing entries, among others, on March 31, 1936, under "Debits" $2,891.03, and entry on June 30, 1936, under "Credits" $2,891.02.

WILLIAM H. KOOP, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. Your name is William H. Koop? A. Yes, sir.

Q.2. What was your position with the Great American Insurance group in 1935? A. I was president of all of the companies except the North Carolina Home. Of that I was chairman of the board.

Q.3. Will you name the companies making that group? A. The Great American Insurance Company, the Great American Indemnity Company, the American Alliance Insurance Company, the American National Insurance Company, the County Fire Insurance Company, the Detroit Fire and Marine Insurance Company.

Q.4. Was the Massachusetts Fire and Marine— A. (Interrupting) Yes, the Massachusetts Fire and Marine Insurance Company, the Rochester American Insurance Company, the Liberty and Security Company and the Great American Indemnity Company.

Q.5. Some are not involved in that—

The Special Master: We can check them up and see which are involved.

Q.6. (By Judge Henson) You were president of all of those companies in the year 1935? A. Except the North Carolina Home. There I was chairman of the board.

Q.7. And what was your situation in 1936? A. The same.

Q.8. And 1937? A. The same.

Q.9. 1938 and 1939? A. Correct.

Q.10. The same. Now, who was vice-president of the Great American Insurance Company in 1935? A. Well, we had a number of vice-presidents.

Q.11. Was Charles R. Street one of them? A. He was. He was in charge of our western territory.

Q.12. Where did he live? A. In Chicago.

Q.13. Was he also a vice-president in the allied group that you have named, or— A. Not in all of them, no.

Q.14. Was he in the County Fire? A. Well, I can't answer that question offhand.

Q.15. Was he in the Detroit Fire and Marine? A. No, he was not.

Q.16. Was he in the Great American Indemnity? A. No.

Q.17. The Massachusetts Fire and Marine? A. I am rather doubtful of that. I wouldn't want to answer that definitely. I would have to check up on that.

Q.18. He was your western manager? A. Yes, sir.

Q.19. Did you know his position in 1935 in the Subscribers' Actuarial Committee? A. He was chairman of it.

The Special Master: Is there anything in Mr. Haid's office here that will serve as a memorandum to refresh your memory as to which of those companies Mr. Street was connected with in 1935?

A. Yes, if he has a Best's.

Mr. Haid: I have a 1935 Argus Chart.

Mr. Berger: I will get Best's.

A. Well, he was evidently vice-president of the American Alliance and he was not of the American National. He was of the County.

Q.20. (By Judge Henson) The County Fire? A. Yes, he was of the Detroit. He was of the Massachusetts. He was not of the North Carolina Home. He was of the Rochester American.

Q.21. Mr. Koop, he was western manager, however, for the companies of this allied group, whether he was vice-president or not, wasn't he, western manager? A. No, that isn't quite correct. Take for instance in the case of the Detroit Fire and Marine Insurance Company. We had an office in Detroit and they covered the greater part of the western territory in 1935. We had the American National in Columbus, Ohio, and they covered part of the territory. But Street was the man that we regarded as the dominating factor in the western territory. In other words, the other offices would follow Street's direction.

Q.22. Then he represented all of these companies in the Missouri rate litigation? A. Yes, sir, he did.

Q.23. Now, Mr. Koop, after this rate litigation had been going on for a time, I will get you to tell us what you know regarding the settlement or proposed settlement, the negotiations leading to the settlement of this litigation. A. In 1935 in May, Street came to New York, came to my office, and told me that the case in the federal court was progressing very satisfactorily; that the report of the Master was favorable to the companies and that he had every expectation that the decision in the federal court would be favorable to the insurance companies' interests. He said, however, that he feared that the attorneys for the state would try to obstruct or delay the distribution of the funds if the award were in favor of the companies, and he said he thought there was a reasonable chance of a compromise which would enable the distribution of the funds without a lot of legal proceedings, and he said that he required approximately $100,000.00 for legal fees.

Q.24. At the time he made this report you have just detailed, who else was present, as well as you can remember? A. It was in my office.

Q.25. That was just to you? A. Just to me personally. He told me what I have since learned was incorrect, that he had been to Hartford the day before and had collected a sum approximating $50,000.00 from the

Hartford companies, and he wanted a like sum from the New York companies. He said that a meeting was to be held when he would explain it in detail. That meeting was on May 2nd.

Q.26. 1935? A. 1935. That was on a Thursday, and on every Tuesday and Thursday we have a meeting of the finance committees of our companies, that is a subcommittee of the board of directors, and I am always present at those meetings. I told Street that I had this finance committee meeting, and while I don't know whether I had a notice of it from Haid or not, Street says, "Well, come over anyway." I said, "Well, I can't get there until after the committee meetings are over." I arrived at the meeting just about as it was breaking up, and as I think back, all I can recall of what Street said at that meeting was, "Gentlemen, you can draw your checks to Folonie or to Folonie and me or to me, just as you prefer." I also heard some of the people present ask, "Well, how much do you want from us?" And Street said, "I will let you know." And that is all there was to it. That is all that I recall. About that time everybody got up and was ready to go and I left.

Q.27. Do you recall some of the people who were present? A. That is a long time, four years ago.

Q.28. Do you recall that Mr. Kurth was there? A. Yes, he was there. Kurth was there and Haid was there and I think Culver was there.

The Special Master: Who was Culver?

A. He is the president of the Continental group.

Q.29. (By Judge Henson) Was Mr. Barbour there? A. I don't remember Barbour.

Q.30. Tell me who he is. A. He is from the Northern Assurance.

Q.31. You don't recall his being there? A. I do not, no. Parsons, I think, was there, and my thought is—I may be wrong—that Parsons and I am not sure about Warner.

Q.32. What did he say this $100,000.00 was for? A. Legal expenses. He told me that in my office.

Q.33. You don't recall what he said there in the room when the others were present, as to that? A. I have told you everything that I recall was said. I got there late. The meeting was just about ready to disintegrate.

Q.34. He was with you, I assume, in the forenoon of May 2nd? A. Yes, he probably arrived on the Century.

Q.35. And you talked to him at length that morning before the meeting was held? A. Well, I wouldn't say it was at length. I wouldn't say it was at length. He came in and told me the purpose for which he was there. He may have been there for fifteen or twenty minutes.

Q.36. Did you ask him what legal expenses it was? A. No, I did not.

Q.37. Did he name the legal expenses or the people to whom it was to be paid? A. No.

Q.38 Did he name any emergency why legal expenses were required right then? A. No, he did not.

Q.39. Who were the lawyers representing these companies at the time? A. I don't know that.

Q.40. You remember it was Hicks and Folonie particularly? A. Yes, I know that Hicks and Folonie were.

Q.41. Did you know the names of any of the others? A. I do not.

Q.42. Whom were these checks made to, if you remember? A. Our contribution to that $100,000.00 was paid through our Chicago office under Street's instructions on a voucher reading about like this: "For attorneys' fees in connection with Missouri litigation," and it was drawn to the order of Folonie, Attorney.

(Check requisitions and check, handed to the reporter, were marked for identification as "Defendants' Exhibits 82, 83 and 84, EFM.")

Q.43. I show you Exhibit 82, and will ask you if that is the check requisition about which you have just testified. A. Yes.

Judge Henson: I now introduce that in evidence.

(Which said Defendants' Exhibit 82, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

16953

CHECK REQUISITION

Check Name of Company

- ✓ GREAT AMERICAN INS. CO.
- AMERICAN ALLIANCE INS. CO.
- MASSACHUSETTS F. & M. INS. CO.
- NORTH CAROLINA HOME INS. CO.
- ROCHESTER AMERICAN INS. CO.
- ROCHESTER UNDERWRITERS AGENCY
- COUNTY FIRE INS. CO.

CHECK $ 10.000⁰⁰ PAYABLE TO R. J. Palonis, Atty

IN PAYMENT OF Adv. on Mo. Atty's Fees

CHARGE TO Suspense

APPROVED BY

DATE 5/9/35

MAY 9 - 1935

FORM 40 100 6-1-33 J.O.C.

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Q.44. I show you Exhibit 84 and will ask you if that is the check made by your company signed by Mr. Street and made to Mr. Folonie for $10,000.00, if this is the $10,000.00 payment which you have just testified about. A. Yes.

Judge Henson: I introduce Exhibit 84, just to keep this all straight.

(Which said Defendants' Exhibit 84, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Q.45. Later on your company paid $5,997.00 additional on this item, didn't they, and I show you Exhibit 83 and ask you if that is the requisition for that other payment? A. That is correct. You understand that I did not see any of those records until 1939 in Kansas City, but from the information I gained at that time, I am answering in the affirmative.

Judge Henson: I introduce Exhibit 83.

(Which said Defendants' Exhibit 83, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

24958

CHECK REQUISITION

CHECK NAME OF COMPANY

- ✓ GREAT AMERICAN INS. CO.
- ____ AMERICAN ALLIANCE INS. CO.
- ____ MASSACHUSETTS F. & M. INS. CO.
- ____ NORTH CAROLINA HOME INS. CO.
- ____ ROCHESTER AMERICAN INS. CO.
- ____ ROCHESTER UNDERWRITERS AGENCY
- ____ COUNTY FIRE INS. CO.

CHECK $ 5997.00 PAYABLE TO C R Steel agent

IN PAYMENT OF (Audit as from 7/24. Audited by Mr. Koop) AUDITED F. T. M.

CHARGE TO Mo. Impounded Prems -

APPROVED BY C R L

DATE 3/24/36

FORM 40 10M 4-1-42 J.O.C.

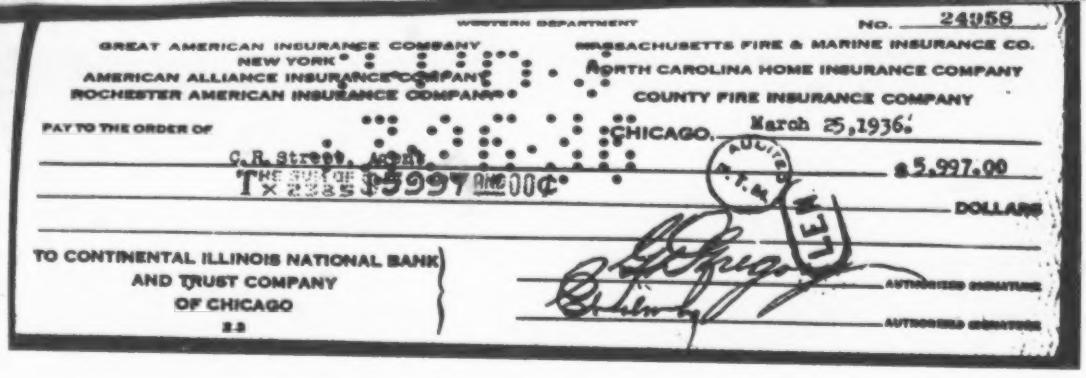
402

(Photostatic copy of check, handed to the reporter, was marked for identification as "Defendants' Exhibit 85, EFM.")

Q.46. I show you Exhibit 84 and will ask you if that is a photostatic copy of the check and the endorsements of the $5,997.00 payment about which you have just testified. A. Yes.

Judge Henson: I now introduce Exhibit 85 in evidence.

(Which said Defendants' Exhibit 85, so offered in evidence, having been previously duly marked, is in words and figures as follows:)



WESTERN DEPARTMENT

NO. 24958

GREAT AMERICAN INSURANCE COMPANY
NEW YORK
AMERICAN ALLIANCE INSURANCE COMPANY
ROCHESTER AMERICAN INSURANCE COMPANY

MASSACHUSETTS FIRE & MARINE INSURANCE CO.
NORTH CAROLINA HOME INSURANCE COMPANY
COUNTY FIRE INSURANCE COMPANY

PAY TO THE ORDER OF

CHICAGO, March 25, 1936

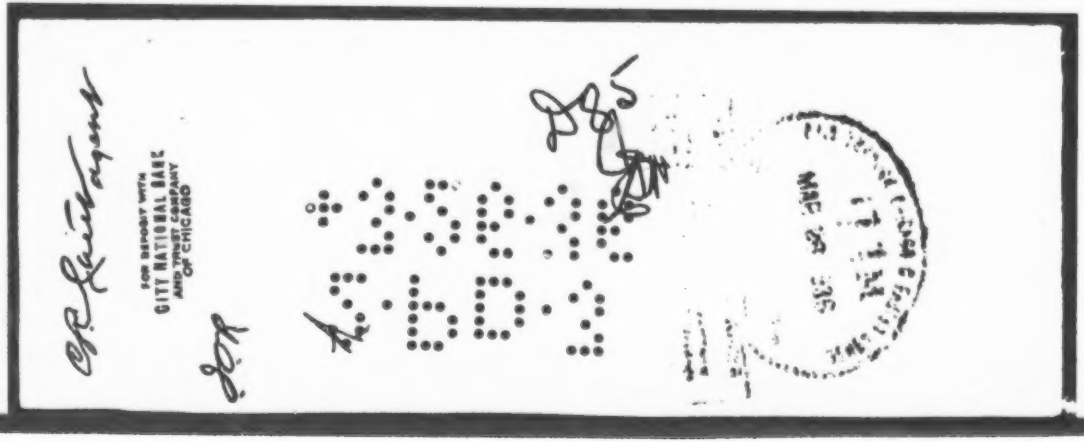
C.R. Streit, Agent,

THE SUM OF $5997 AND 00¢ — $5,997.00 DOLLARS

TO CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

AUTHORIZED SIGNATURE

AUTHORIZED SIGNATURE



C.R. Streit Agent

FOR DEPOSIT WITH
CITY NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

MAR 26 1936

Q.47. Now, this $10,000.00 payment was made March 9, 1935, or about that date, was it? A. March 9th.

Q.48. May 9th, and the $5,997.00 was made March 25th, or about that date, 1936, if you remember? A. Yes.

Q.49. How was the figure ascertained that $5,997.00 was the proper amount to pay? How was it ascertained that the check of $5,997.00 was the correct figure to pay in 1936? A. I am guessing at that.

The Special Master: Did you ascertain it?

A. No, I did not.

The Special Master: Do you know who did?

A. It was ascertained by Street.

Mr. Berger: Well, look at your second page there. I gather it was a computation made at the time these exhibits were prepared.

A. Well, my understanding is this, that there was supposed to be a payment of 5 per cent of our impounded premiums. The Great American had already advanced $10,000.00 and the $5,997.00 plus the payment by the Detroit.

Q.50. (By Judge Henson) Of how much, please? A. $897.43 according to this memorandum, brought it up to $16,894.43, which, I take it, was 50 per cent.

Q.51. 5 per cent? A. 5 per cent of the impounded premiums of the Great American Insurance Company, the American Alliance, the Massachusetts, the Detroit and the County.

Q.52. Up to May 1, 1935? A. Yes.

Q.53. The impoundments up to that time? A. Yes. The figures were all worked out in Street's office.

Q.54. Now, Mr. Koop, when you paid this $10,000.00 did you make or keep any memorandum of your conversation with Mr. Street? A. I did not.

Q.55. And put it in your files? A. No, I did not.

Q.56. When you paid the $10,000.00, what understanding, if any, was made as to adjustment of that figure for a later time? A. Why, it was understood that the companies that made the advances would be credited when the final distribution was made.

Q.57. Didn't Street give you the understanding that the $100,000.00 was not to be used unless the settlement was effected? A. No, he did not.

Q.58. You didn't get that understanding at all? A. Oh, no, no.

Q.59. So you authorized this payment of $10,000.00 in 1935 without— A. (Interrupting) I didn't authorize it.

Q.60. (Continuing) —anything further? A. I didn't authorize it.

Q.61. Well, you were superior to Mr. Street? A. May I make an explanation of that?

Q.62. Yes, sir. A. I think it is well to have this clarified. Street at one time was the outstanding man in fire insurance circles in Chicago. He was brought East as the president of the Fidelity Phenix Insurance Company. He got into a row with the chairman of the board of that company and resigned. I think possibly that was along about 1926. I can't fix the date from memory. Our affairs in the western department were not running very smoothly then, and my predecessor, C. G. Smith, who was then head of the Great American group, knowing Street intimately, asked Street to join our organization. Street was the type of man that felt that he knew more about certain things than anybody else. He felt he knew more about the western business than anybody in our organization and when he was asked to come to us it was at a salary less than one-half the amount that he was getting with the Fidelity Phenix, but he had a contingent interest in the profits. Now, he feared that if we interfered from the home office with his conduct of the western department, it might impair his ability to make his contingent profit and he agreed to come with us only after Mr. Smith had agreed with him that there would be no interference from the home office, that he was to be the sole judge of what was to go on in the western field. That, of course, would not apply to investments, and later on when our indemnity company was organized, that was eliminated because Street didn't know anything about indemnity insurance.

The Special Master: Just fire underwriting?

A. Just fire and the allied lines.

The Special Master: Fire, windstorm and those things?

A. Correct. But in all other respects Street was absolutely dominant. Now, to illustrate my point, after I became president I had a complaint about a loss adjustment in the western field. It was addressed to the president of the company without specifically naming the president. I dictated a letter to Street and said, "We have a letter of a certain type" and gave him a copy of it and asked for an explanation. I had that letter lying on my desk, and as luck would have it, Mr. Smith, who then was chairman of the board, came along and sat down and

he happened to look at this letter and he said, "Oh, no, no, no, Koop, you can't send that letter. All you can do is to acknowledge receipt of it and say it has been referred to Mr. Street. Street is in complete charge of our western department."

Q.63. (By Judge Henson) Well, you so regarded him in 1935, then? A. I did in 1935 and up to the time of his death.

Q.64. He died in 1938, I believe, February 1, 1938? A. I think that is right.

Q.65. I think that is about right. A. Yes.

Q.66. So you were willing just to leave the entire affairs to him, the Missouri rate litigation, to handle as he pleased? A. Absolutely. We never paid any attention to it whatsoever.

Q.67. His mind was the dominant mind on all subjects connected with that litigation? A. Yes, and, of course—

Q.68. (Interrupting) And you made him—

Mr. Murphy (Interrupting): Let the witness finish his statement.

A. In addition he had the advice of his Actuarial Committee and his attorneys out there.

Q.69. (By Judge Henson) Did he indicate to you when he first approached this question of settlement as to what possible percentages of recovery the companies would get? A. Yes, he did.

Q.70. What was that? A. He figured 10 per cent to the policyholders, well, 80 per cent to the insurance companies. I don't know whether he mentioned 50 and 40 or 60 and 30, but it was 10 per cent to the policyholders.

Q.71. What caused that to be changed so that the settlement actually was 20 per cent to the policyholders, if you know? A. Why, he advised us by telegram that he couldn't get by with the 10 per cent. The best arrangement he could make was 20 per cent, and I take it that that was after conference with the Superintendent of Insurance.

The Special Master: Do you know anything about that?

A. I do not.

Judge Henson: We have discussion—

Mr. Murphy (Interrupting): Where is that telegram?

A. I have it outside. Would you like to have it?

Judge Henson: Yes.

Mr. Berger: We have the Hartford telegram.

(Said copy of telegram, handed to the reporter, was marked for identification as "Defendants' Exhibit 86, EFM.")

Q.72. (By Judge Henson) Mr. Koop, I show you a copy of telegram which you have produced. I guess it is the telegram itself. A. No, this is not the telegram. It is a copy.

Q.73. Exhibit 86 then is a copy of the telegram about which you have just testified? A. To the best of my knowledge and belief.

Judge Henson: I wish to introduce Exhibit 86.

(Which said Defendants' Exhibit 86, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 86.

Copy of Radiogram

1935 May 16 AM 12 52

ACG 1 CG TR 176 NL 1/50

C Chicago Ills 15

W H KOOP

President One Liberty St New York

At Kansas City Yesterday With Attorneys For Both Sides And State Officials Situation Much Changed By Federal Decision Requiring Companies To Show Refunds In Old Case Paid In Full Before They Decide Pending Case Which Means Reference To Master And Months Of Work At Great Expense Decision On Vital Point In State Court Rendered Under Pressure In Our Favor But With Some Bitter Judicial Comment These Things Make Ninety Percent Settlement As Originally Proposed Impossible And Governor Former Judge Has Made Special Study And Claims State Will Win All Cases Under Pressure Is Willing To Compromise But Best Can Do Is Eighty Percent Instead Of Ninety We Paying States Attorneys Agreed Amount Our Expenses Slightly Reduced Main Part Impounded Funds To Come To Companies Immediately But Twenty Percent To State For Policy Holders Balance To Me And Folonie As Trustees Pending Cleanup Considering Missouri Situation Existing Today And Large Expense Necessary In Further Proceedings Recommend

This Settlement No Settlement Effective Until Approved By Both Courts Please Rush Copies To Kurth Culver Warner Parsons Koeckert Shallcross If Home
C R Street"

Q.74. Now, upon receipt of that telegram, what, if anything, did you do? A. I called up this office.

Q.75. By "this office" you mean— A. (Interrupting) Mr. Haid's office.

The Special Master: You mean the office of the Executives Association?

A. Yes.

Q.76. (By Judge Henson) Paul L. Haid? A. Paul L. Haid, but my impression is that Haid was away at the time. I am talking from memory, and I turned it over to Mr. Erskine, his assistant, and asked him to show it to the people that Street had named in his telegram and get their consent or their concurrence or whatever you want to call it, to the 20 per cent compromise instead of the 10.

Q.77. Did you get a report from his assistant as to whether this was agreeable with the rest of them? A. Yes, Erskine sent me copies of his telegrams to Street.

Q.78. Then he advised Mr. Street? A. He did.

Q.79. Did you send Mr. Street any wire yourself? A. Yes, you have it there.

(Said copy of telegram, handed to the reporter, was marked for identification as "Defendants' Exhibit 87, EFM.")

Q.80. I show you Defendants' Exhibit 87. A. There are two of them.

(Copies of telegrams, memorandum and letter, handed to the reporter, were marked for identification as "Defendants' Exhibits 88, 89, 90, 91, 92 and 93, EFM.")

Q.81. Now, I show you Defendants' Exhibit 87 and 88. Are those the two telegrams to Street then? A. Yes, sir.

Judge Henson: I wish to introduce Exhibits 87 and 88.

(Which said Defendants' Exhibits 87 and 88, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

"DEFENDANTS' EXHIBIT 87.

Western Union

May 16 1935

Charles R Street Vice President
310 South Michigan Avenue
Chicago Illinois

I Asked Erskine Haids Assistant To Confer With Parties Named Your Telegram Stop He Will Wire You Direct

W H Koop"

"DEFENDANTS' EXHIBIT 88.

Western Union

May 16, 1935
10:10 A M

Mr. C R Street Vice President
310 South Michigan Avenue
Chicago Illinois

Telegram Received And Matter Is Having Attention
W. H. Koop"

Q.82 (By Judge Henson) Now, I show you Exhibit 89. What is that, Mr. Koop? A. This is a memorandum from Erskine.

Q.83. Mr. Erskine is an assistant of Mr. Haid's? A. Yes, sir.

Judge Henson: I introduce Exhibit 89.

(Which said Defendants' Exhibit 89, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 89, EFM.

May 16, 1935

Memorandum for Mr. W. H. Koop

Messrs. Culver, Koeckert and Warner are agreeable to the new terms of settlement proposed by Mr. Street. Mr. Warner expressed the opinion that Mr. Street would do well to have a pretty definite understanding regarding the amount of the payment to the state's attorneys. All three gentlemen are content to leave the subject in the hands of Mr. Street and are relying upon you so to advise him. I have still to see Mr. Parsons.

Mr. Kurth recently left for the Pacific Coast. His itinerary makes it appear that he can be reached at the Cosmopolitan Hotel at Denver, Colorado, on Saturday, May 18th, and at the Ambassador Hotel at Los Angeles, Calif., on Tuesday, May 21st. Having in mind the possibility of some unforeseen developments, does it not seem best for Mr. Street to get in touch with Mr. Kurth?

I am advised that Mr. Shallcross will be in his office Monday next, the 20th, and I have no doubt we shall be able to see him sometime on Monday. We shall endeavor to do so."

Q.84. (By Judge Henson) Now, I show you Exhibit 90. State whether or not that is a copy of a letter of Mr. Erskine's to Street. A. That was a copy of a letter to Mr. Street from Mr. Erskine. The copy was sent to me by Mr. Erskine.

Judge Henson: I introduce Exhibit 90.

(Which said Defendants' Exhibit 90, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

DEFENDANTS' EXHIBIT 90, EFM.

"Insurance Executives Association
Copy

Copy for Mr. Koop
Personal

May 17, 1935.

Mr. C. R. Street, Vice President,
Great American Insurance Company,
310 South Michigan Avenue,
Chicago, Ill.

Dear Mr. Street:

I enclose a copy of a telegram dispatched late yesterday afternoon and also copy of a telegram sent you this morning. In asking me to interview the gentlemen mentioned in your night letter, Mr. Koop explained that the subject was confidential, and you may therefore understand that I have had no conversations except with those gentlemen whose opinions have been expressed in the two telegrams sent you.

You may also understand that the approval of the gentlemen quoted was given without any qualification. Mr. Warner expressed the opinion that it would be well to have a pretty definite understanding regarding the amount of the payment to the state's attorneys but he

gave his approval without reservation or qualification. All of the gentlemen quoted assured me that they would be agreeable to having Mr. Koop report their expressions of approval to you but Mr. Koop requested me to advise you in his behalf.

Very truly yours,
J. D. Erskine
Secretary.

Encs.
H"

Q.85. I show you Exhibit 91. What is that a copy of? A. A copy of a day letter from Erskine to Street.

Judge Henson: Of May 16, 1935. I wish to introduce Exhibit 91.

(Which said Defendants' Exhibit 91, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 91.

Postal Telegraph

May 16 1935

Mr C R Street Vice President
Great American Insurance Company
310 South Michigan Avenue
Chicago Illinois

Culver Koeckert Koop And Warner Unreservedly Agreeable To New Terms Of Settlement Stop Will Consult Parsons Tomorrow And Shallcross Monday Stop Suggest You Telephone Kurth At Cosmopolitan Hotel Denver Colorado This Evening Between Six And Seven Or Same Place Tomorrow Stop Otherwise Locate Him Care Howard A Reynolds State Agent Tramway Building Denver

J D Erskine"

Q.86. (By Judge Henson) Now, what is Exhibit 92? A. Copy of a telegram from Erskine to Street of May 17th.

Judge Henson: I wish to introduce Exhibit 92.

(Which said Defendants' Exhibit 92, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 92.

Copy of Telegram

May 17 1935

C R Street Vice President
Great American Insurance Company
310 South Michigan Avenue
Chicago Illinois

Parsons Also Agreeable To New Terms Of Settlement

J D Erskine"

Q.87. (By Judge Henson) Now, this 93, what is that? A. That is a telegram from Street to me.

Q.88. What is the date of it? A. May 23, 1935, referring to the payment of commissions on the entire amount of impounded premiums.

Judge Henson: I wish to introduce Exhibit 93.

(Which said Defendants' Exhibit 93, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 93.

Copy Of Radiogram

Chicago Ill
May 23 1935

W H Koop
President Great American Insurance Co
One Liberty Street

See From Article In Wednesdays Journal Of Commerce It Is Reported Missouri Agents Will Be Paid Commission On Full Amount Impounded This Question Is Not Mentioned In Tentative Agreement Which Has Been Drawn And Has Been Carefully Safeguarded By Refusal To Discuss Question Either Privately Or In Our Meetings With State Authorities Because It Was Purely A Matter Between Companies And Their Employees Which We Would Settle According To Our Contract With Them Companies Position Has Been Safeguarded In This Respect Since Impounding Began

C R Street"

Q.89. (By Judge Henson) After Street told you he had to raise $100,000.00, I suppose that he told you that your share or your company's and associates' shares would

be $10,000.00? A. No, I don't think he mentioned it at all.

Q.90. When did you ever come to the knowledge that that was the amount if he didn't mention it then? A. He said, "We are going to make our contribution," but he didn't fix the amount, as I recall it, and the first knowledge that I had as to the actual amount of $10,000.00, I think, was when I saw the photostatic copies of the checks. That was in the early part of this year.

Q.91. This year? Then you left it to him to fix the amount of the contribution? A. Yes, it was within his authority.

The Special Master: I don't remember what you said this was.

Judge Henson: That is Defendants' Exhibit 89.

A. That was a memorandum I received from Erskine.

The Special Master: From Erskine?

A. Yes.

The Special Master: That is the assistant to Paul Haid?

A. Correct.

Q.92. (By Judge Henson) Did you mention Mr. Street's visit and the object of it to any of your associates, I mean any of the other officers of your companies when he was here? A. I don't think so.

Q.93. Do you know whether he went and discussed it with any of them or not when he was here? A. He did not, I am sure of that, because I made inquiry later on.

Q.94. You think the entire discussion was with you? A. Yes.

Q.95. How soon after that was it that your board of directors met? Would it be very many days? A. No, almost immediately.

Q.96. Did you or Mr. Street report all of this to the board of directors? A. Emphatically no.

Q.97. There was no record made then by the board of directors that you authorized Mr. Street to go out and contribute a part to a fund of $100,000.00? A. No, that was in the regular course of business. It was an underwriting proposition and the board of directors don't attempt to handle that sort of a thing. You made a statement that I would like to correct. You say I authorized Mr. Street.

Q.98. Yes. A. I didn't authorize him. It was within his authority.

Q.99. I see. Do you know the circumstances there in March, 1936, which caused the issuance of the check

of $5,997.00 by the Great American? A. Yes, sir, I know it as Street told me.

Q.100. Did he tell you at the time the check was issued? A. He told me before the check was issued. He told me—let me see if I can get this straight. He told me that at the time there was a separation in the groups of companies. You had one group in the federal courts and one in the state courts, and he told me that at the time the separation was made he had promised the companies in the state courts that they would be accorded the same treatment as was accorded to the companies in the federal court and vice versa. In 1936 the federal court case had been decided.

Q.101. That was on February 1, 1936, wasn't it? A. I can't fix the date, but the case had been decided. Now, Street told me that he hadn't made good on his promise to the state court companies and also had to take care of the legal fees and he wanted the 5 per cent in that connection.

Q.102. Legal fees of what? A. Of the state court companies.

Q.103. All right. A. And he wanted the 5 per cent to cover that.

Q.104. Now, you were advised when the federal court rendered its decree and its order of distribution, weren't you? A. Yes.

Q.105. And in round figures and percentages what were the terms of that decree as you understood it? A. 20 per cent to the policyholders, 50 per cent to the companies direct and 30 per cent to Street and Folonie as trustees.

Q.106. And what were the terms of their trust? A. I can't answer that. I don't know.

Q.107. Aren't you aware of the fact that 30 per cent was set out to them with which to repay to the state of Missouri $200,000.00 for its expenses, $500,000.00 to Missouri for its lawyers, other fees for your own lawyers to be paid, and then the balance of the 30 per cent to go to the companies? A. I don't check on the amounts. You say $200,000.00 and $500,000.00. I will accept those as being correct. In a general way I did know that, yes.

Q.108. And you knew that after all legal expenses were paid, if anything of the 30 per cent remained, the company was to have that, nine companies were to have that? A. Correct.

The Special Master: Where were the agents' commissions to be paid? The agents had commissions that had to be repaid.

A. That would have to be paid out of the companies' receipts.

The Special Master: Out of the 50 per cent?

A. The 50 per cent.

Q.109. (By Judge Henson) Mr. Koop, then when Street was talking to you about 5 per cent for legal expenses, you knew there was a fund available for that? A. Not according to Street's explanation, no.

Q.110. State whether or not the company had received 11 per cent out of the 30 per cent? I mean 11 per cent of the whole impoundments about the time this 5 per cent was called for, or at the same time. A. To the best of my knowledge, we did. The records were in the West.

Q.111. When you received 11 per cent and were called upon at the very time for 5 per cent more, didn't that raise some suspicion in your mind? A. No, it did not. Street told me that he required—

Q.112. Now—

General Bullitt: Let him finish.

The Special Master: I want to hear the explanation.

A. Street told me that he required that because there were legal expenses, and a share of the impoundings for the state court companies, and that he couldn't use any part of that 30 per cent because that belonged to the federal court companies; that he had no right to use that for the benefit of the state court companies.

Q.113. (By Judge Henson) Then he was raising this 5 per cent to pay the lawyers in the state court cases? A. That is what he told me.

Q.114. Didn't that seem eminently unfair to you? A. No, it did not. Having in mind what Street told me, he said this was a common enterprise, one for all and all for one.

Q.115. None of your companies were in the state court, were they? A. I think the Rochester was.

Q.116. You think the Rochester was? A. Yes.

Q.117. I suppose its impoundments were small? A. Yes.

Q.118. That is the reason it was there? A. Yes.

Q.119. Then the idea you had was that this was to pay legal expenses over there in the state court group and not in this group of federal cases? A. That was

my impression, yes, sir. Now, possibly I have used more exact language than Street did, but that was the impression that I had.

Q.120. Well, at all events then Mr. Street was given this check of $5,997.00 to pay such expenses, legal expenses, as he pleased? A. He caused that check to be drawn right through his office.

Q.121. Yes. I believe you didn't even sign a requisition for it. A. No, no.

Judge Henson: That is all, I believe.

The Special Master: Did you say one of your companies was in the state court case?

A. Yes.

The Special Master: And the state court was also impounding funds just like the federal court was?

A. Yes.

The Special Master: But it was your understanding that the companies that were in the federal court case were going to raise money out of their impounded fund to pay attorneys in the state case?

A. No, my understanding was this, that Street realized that he could not use the funds of the federal court companies for this other purpose.

The Special Master: That is for the state cases?

A. Yes, and the story that he told me led me to believe that he was asking the companies voluntarily to contribute 5 per cent with the expectation when all the settlements were made, the whole thing would be washed out and all calculations made and a proper allocation of the proceeds.

The Special Master: Did he offer any explanation as to why that money wasn't to be raised out of the funds impounded in the state cases?

A. Well, that money was tied up and I guess he couldn't get hold of it at that time.

The Special Master: Well, on a settlement he could. He couldn't get hold of it in the federal court without a settlement.

A. But I rather inferred he wanted to make payments to his attorneys, something on account, and in addition to that I think the thing that he feared was that after this money was all distributed to the companies in the federal court, he might have a little trouble in getting it back again later on. So he thought—I am assuming this—that it made them feel pretty well to

get 11 per cent, and he thought that was a psychological time to get back the 5 per cent.

The Special Master: I understand all of that, but here are two funds by two sets of companies.

A. Correct.

The Special Master: Each one had done the same thing, but in a different court.

A. Yes.

The Special Master: One bunch of companies went in the federal court and their funds were impounded. Another bunch with the same kind of a lawsuit went in the state court and they had impoundings?

A. Yes.

The Special Master: And Mr. Street represented to you that he wanted to settle the whole thing?

A. Yes, he wanted to treat the whole thing as a single, private proposition.

The Special Master: Because, after all, the defendant in both cases was the same man, the Superintendent of Insurance?

A. Yes, sir.

The Special Master: But he proposed to take all of the money for both cases out of the one fund and none out of the other?

A. Because he felt, I take it, that those funds were available while the others were not.

The Special Master: Did he explain why, if there was a settlement? Of course, if there was a settlement the funds would be released one place the same as the other?

A. Yes, sir.

The Special Master: What explanation did he offer because he could release one fund by a settlement, if he did offer one?

A. I don't know that he did offer one. I am not quite sure about that, but my own guess was, and I am guessing, that the federal court cases had been decided. The other state court cases were still in the courts and there was no telling what the decision would be.

The Special Master: This was to be a settlement. If the cases had actually been decided in the federal court, there wouldn't be anything to settle?

A. Yes.

The Special Master: He meant that the Master's reports were in and he considered they were favorable?

A. No, I think—

General Bullitt (Interrupting): No, the decree was in in 1936.

The Special Master: Nothing had happened? This is the last money after they had entered the decree?

A. Oh, yes, this was the last money.

The Special Master: He wanted to clean up and didn't want to wait on whether there would be a decree in the state court case?

A. Exactly.

Judge Henson: When was he talking about raising the $100,000.00?

A. He didn't differentiate.

Judge Henson: That is what I want to get at.

Cross Examination by General Bullitt.

XQ.122. Did Street say anything at any time to you personally about giving your companies a check for 6 per cent of the impounded funds and you giving a receipt back as though you had received 11 per cent? A. Yes, sir, he did.

XQ.123. What did he say about that? A. Why, he said that this was in connection with the second payment. He said that he had decided to issue checks for 6 per cent and would ask the companies to give in return receipt for 11 per cent.

XQ.124. What did you say to that? A. I said, "Why, Mr. Street, that isn't right. It is wholly improper to ask a company to give a receipt for 11 per cent when they are only receiving 6 per cent." He gave me this explanation that I have given here. Now, I said, "If you require that 5 per cent, the proper thing to do is to issue your checks for 11 per cent and ask the companies voluntarily to give you back the 5 per cent that you want."

XQ.125. That is what was done? A. That was done. As a matter of fact, I think there were a few checks issued at 6 per cent. I am not quite sure of that. That is pure hearsay.

XQ.126. Did Mr. Street say anything to you either in connection with the May, 1935, payment or in connection with the March, 1936, payment of the 5 per cent, anything about rendering you an accounting of what he did with the money? A. Yes, sir.

XQ.127. At which time or both times did he say that and what did he say? A. It is my recollection it was after the second payment was made.

XQ.128. What did he say? A. My recollection is that he said, "Now, this is a matter that is being handled by the Actuarial Committee, and after the cases are entirely closed out, a full and complete accounting will be made to you and to every other company that was involved in the Missouri litigation."

XQ.129. Did your company, either you or the board of directors, give Mr. Street any express authority to represent your particular group of companies in any manner differently than the way he was assuming to represent all of the other companies? A. No, under no circumstances. In fact, the directors never knew anything about the situation. This is a matter of underwriting management.

XQ.130. Did you at any time tell Street what he could do or what he should do in connection with the Missouri litigation? A. No, that was in his territory under his jurisdiction.

General Bullitt: That is all I want to ask.

The Special Master: The fact is, in the eighteen states comprising the western territory, he was the superior officer, was he? A. He was the management.

The Special Master: He was the highest officer in the company, in fact? A. Exactly, absolutely.

Re-Direct Examination by Judge Henson.

RDQ.131. Now, he promised a full accounting and report and he lived until early in 1938, I think you will agree. Did he ever make any such accounting or report to you or to anybody else that you ever heard of? A. I never heard of it.

RDQ.132. Did you ever ask him for an accounting and a report? A. I think I asked him what the status was when he made the reply that I have just outlined here a moment ago. Beyond that I never asked him. You understand, of course, that Street was a pretty sick man. Do you know that?

RDQ.133. I don't know much about it. A. Oh, yes, he was suffering from cancer.

RDQ.134. Well, the last part of the last collection made by Mr. Street, or caused to be made by him to finish 5 per cent of your impoundings, was in March, 1936? A. Yes.

RDQ.135. He lived nearly two years afterwards? A. Yes.

RDQ.136. You saw him frequently, I am sure? A. No, that is wrong.

RDQ.137. Did you ever see him after that? A. After '36?

RDQ.138. Yes. A. Oh, yes.

RDQ.139. And did you ever ask him for a report as to what he did with this money or how he used it? A. No, I did not.

RDQ.140. You have since learned through the public press, I suppose, how the whole $100,000.00 was used? A. Yes, sir.

RDQ.141. And that is to corrupt Missouri officials? A. Yes.

RDQ.142. And the same thing of the 5 per cent of the remainder of it? A. Yes.

RDQ.143. You have made that inquiry and satisfied yourself, have you, that that is true and that your money went to that purpose? A. I am inclined to believe that is so. In fact, I can't feel otherwise.

Judge Henson: That is all.

The Special Master: As I understand it then, the reason the money was available out of the federal fund was because the decree had been entered? A. Correct.

The Special Master: The reason the money was not available out of the state fund was because nobody knew whether a decree would ever be entered?

A. Correct.

The Special Master: And if so, whether it would be for you or against you?

A. Yes, sir.

The Special Master: And all of the money in the state fund belonged to companies that had entered into the state cases?

A. Yes.

The Special Master: And none of the money in the federal fund belonged to them?

A. Correct.

The Special Master: But what he wanted the people to do, he wanted the insurance companies that had brought their suits in the federal court to advance the money to effect a settlement in the state cases and take their chances as to whether there would be a settlement?

A. Yes, sir.

The Special Master: That is what you did?

A. That is what we did.

RDQ.144. (By Judge Henson) And, therefore, your funds, as you thought, were to be used to pay the lawyers for their services in the state court cases? A. Well, now, I don't want to go to work and say it was specifically for the lawyers in the state court cases. It was for legal fees and there may have been an overhang. I can't tell you whether there was an overhang. There were legal fees and the question of impoundings for the state court companies.

Re-Cross Examination by General Bullitt.

RDQ.145. Didn't you say and isn't it a fact that Mr. Street in asking the companies voluntarily to make these additional payments, especially the last payment of 5 per cent, said he had promised that the state court companies would receive the same consideration as the federal court companies, and he wanted to equalize them up and needed the money to equalize them, not merely in attorneys' fees but in some way they would come out just like the federal court companies? A. That is correct. That is what I intended to convey. Possibly I didn't do it so well.

RDQ.146. It was not to appease the state but to equalize the state court companies? A. Yes.

The Special Master: But it isn't true to say the last payment was 5 per cent. The 5 per cent included the first payment; that is right, isn't it?

A. Yes, sir, the two together aggregated 5 per cent.

The Special Master: If anybody had made a contribution to the $100,000.00 fund, he made that much less so that his total contribution at the last would be 5 per cent?

A. Correct.

General Bullitt: That is all.

Judge Henson: Was that 5 per cent fixed at the time this first payment was arranged of the $100,000.00?

A. No, it was on the second.

Judge Henson: That is all.

(Witness excused.)

WILFRED KURTH, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. State your name, please. A. Wilfred Kurth.

Q.2. Mr. Kurth, where do you live? A. Ridgewood, New Jersey.

Q.3. That is just out of New York, I suppose? A. Yes, commuting distance.

Q.4. What is your position at this time with the Home Insurance Company? A. Chairman of the board.

Q.5. What was your position in the year 1935 and 1936 with that company? A. I was president of the Home.

Q.6. Now chairman of the board? A. Yes.

Q.7. Were then president of the company? A. Yes.

Q.8. What, in 1935, were the allied companies of the Home Insurance group? A. Well, in New York City there was the Baltimore American, the National Liberty, the Southern Fire, the Home Indemnity, the Paul Revere, in New Brunswick the New Brunswick Fire.

Judge Henson: Pardon me, Mr. Berger, he is naming some not involved.

The Special Master: Ask him a leading question.

Judge Henson: To save time I am going to do that.

Mr. Berger: Some of those companies were in the state court?

A. In the state court.

Mr. Berger: Some of those companies were in the federal court and some in the federal of the Home group.

Q.9. (By Judge Henson) I will ask you if the City of New York was one of the allied companies? A. Yes.

Mr. Berger: I think it can be admitted that those four companies, the Home Insurance Company, City of New York, the Franklin Fire and the National Liberty were the four companies of the Home group that had federal court cases.

The Special Master: Is that right, Mr. Kurth?

A. Yes.

Q.10. (By Judge Henson) That was the situation in 1935? A. Yes.

Q.11. All had impoundments in the Missouri rate cases? A. Yes.

The Special Master: The same was true in 1936?

A. Yes.

Q.12. (By Judge Henson) Now, Mr. Kurth, directing your attention to about May 2, 1935, do you recall a meeting here in New York of a number of insurance executives with Charles R. Street of Chicago? A. Yes.

Q.13. Can you name some of the others who were present at that meeting? A. Let's see, I think Mr. Koop was present, I think Mr. Warner of the Royal, Mr. Barbour of the Northern.

Q.14. Was Mr. Culver? A. I believe so, yes.

Q.15. Of the Continental? A. Yes.

Q.16. Was Mr. Cartlidge present? A. Well, I thought it was Mr. Warner. Possibly it was Mr. Cartlidge.

Q.17. Was it possible that both were present? A. That might be possible, too.

Q.18. Was Mr. Koeckert present? A. I believe so.

Q.19. He represents the Commercial Union. Was Mr. Parsons of the Crum and Forster present? A. That would be possible, although I don't specifically recall him.

Q.20. You were well acquainted with Charles R. Street, I suppose? A. Very well.

Q.21. Who caused you gentlemen all to assemble? A. I think Mr. Haid or his secretary called up and said he wanted to get a few of the executives together here to meet Mr. Street.

Q.22. These executives which you have mentioned are all executives of companies having a common interest in the Missouri rate cases? A. Well, we were all involved.

Q.23. All involved in a common interest, weren't they; you all had the same interest, didn't you? A. The same interest; we were similarly involved, if you will put it that way.

Q.24. When you met, who, if anybody, addressed the meeting? A. Mr. Street.

Q.25. Tell us as near as you can remember what Mr. Street said at that meeting? A. He said it was called for the purpose of discussing the Missouri litigation and that he wanted to raise some money and he thought he would get some of the larger companies or those with the largest interest together, and raise $100,000.00. He would ask them to contribute that amount and save the delay that would be occasioned by applying to all of the companies interested in the litigation.

Q.26. What did he tell you the $100,000.00 was for? A. For expenses.

Q.27. What explanation did he make that it had to be raised immediately? A. Perhaps I had better explain that this litigation had gone over the terms of

three presidents of our companies before me; that he was known to be in charge of the Missouri rate litigation on behalf of the Subscribers' Committee in Chicago; that everyone recognized that he was in charge of it and were glad to have him tend to it because it was getting on a lot of people's nerves, the length of time it had been going on, and so far as I personally am concerned, his mere mention of the fact that he wanted to raise $100,000.00 in connection with the Missouri rate litigation and that it would be fully accounted for was sufficient.

Q.28. He was raising this money before any compromise was made and you knew that, didn't you? A. Yes, I believe he mentioned that there was possibility of getting this settled on a 90-10 basis.

Q.29. What do you mean by 90-10? A. 90 to the companies and 10 per cent—

Q.30. (Interrupting) That is percentage of the 100? A. Percentages of the impoundings.

Q.31. Did he explain any more to you as to why this was needed before any settlement was negotiated? A. No.

Q.32. This money, in fact, was raised before the settlement was made with Mr. O'Malley, the Superintendent, as you understood it, wasn't it? A. That is the fact. That question wasn't raised at the time. I want to emphasize the fact personally and I think that is true of the others. We had every confidence in Mr. Street and his request for $100,000.00 with full accounting to be made seemed reasonable, and it was cheerfully subscribed.

Q.33. Did he elaborate any further on the nature of expenses that he had to have the $100,000.00 for? A. He mentioned legal expenses in a general way, but he emphasized the fact that they would have a full accounting.

Q.34. Did you get the idea that he had to pay your own lawyers now before they could go on with the settlement or why couldn't they pay your own lawyers after the settlement? A. Well, I didn't follow that through.

Q.35. Didn't that occur to any of you fellows? A. Well, it didn't occur to me. I can't speak for the rest.

Q.36. Well, at that meeting what was determined there that your companies' contribution would be to that $100,000.00 fund? A. We were put down for $15,000.00.

Q.37. Who put you down for $15,000.00? A. Well, it was general agreement. He wanted to raise a certain sum here and they picked on the larger companies, the companies largely interested for the larger proportion.

Q.38. How much did he want to raise here? A. Well, he mentioned a figure of $100,000.00, whether he was going to raise that all here or partly in Hartford, I don't recall.

Q.39. Did he say anything about Hartford at all in that meeting? A. He said either that he had been or was going there; I am not sure of that.

Q.40. Did he tell you anything about the success he had had at Hartford? A. Well, that is the point I am not sure. I am trying to segregate in my mind what I found out afterwards and what he told us at the time.

Q.41. What did you find out afterwards? A. Well, he raised some in Hartford, yes.

Q.42. As a matter of fact, this meeting here in New York that you have discussed was the day before the Hartford meeting, wasn't it? A. Well, I am not sure. I am not sure.

Q.43. What was the understanding about your $15,000.00 that you paid? Was there to be any accounting of it? A. Absolutely, yes, full accounting.

Q.44. What if anything more was to be paid, or were you to have any of this $15,000.00 back? What about it? What was the understanding at the time? A. Well, it was to be applied to expenses and that when the final cleanup of the Missouri impoundings was made, it would be accounted for.

Q.45. Well, you couldn't conceive of anything in the way of legal expenses only to your own lawyers? There didn't anything else occur to you only your own lawyers' fees? A. I didn't think of that at all. I didn't consider it at all.

Q.46. Well, you are not in the habit of just paying lawyers generally?

Mr. Murphy: Let him finish.

Q.47. (By Judge Henson) Pardon me. A. I want to repeat again that if he said, Mr. Street said that this was a payment on account and that it would be disposed of through proper accounting methods when the situation was cleared up, that was sufficient for us.

Q.48. That is all you wanted and all you cared anything about? A. That was all I was interested in, yes.

Q.49. Did you or anybody else ask him if this was to be legally applied or did anybody ask if there was any bribery involved in it? A. I didn't hear anybody mention that.

Q.50. You never heard anything of that kind? A. No.

Q.51. Were there any of these Missourians named in connection with it? A. No.

Q.52. The Superintendent of Insurance? A. No.

Q.53. Or the political bosses or anything of that kind? A. No.

(Instruments, handed to the reporter, were marked for identification as "Defendants' Exhibits 94, 95, 96, 97, 98 and 99, EFM.")

Q.54. I show you Defendants' Exhibit 94 and will ask you whether or not that is a photostatic copy of a check and its endorsements for $15,000.00 signed by you. A. Yes, that is my signature. That is our check.

Q.55. After issuing that check, to whom, if anybody, was it delivered? A. I think it was delivered to this office.

Q.56. You think you delivered it to Haid's office or to Mr. Street himself? A. To Mr. Haid's office here. I believe he was collecting them.

Q.57. That check was made the same day that the meeting was held, wasn't it? A. I would judge so, yes.

Q.58. The check bears date, May 2, 1935? A. Yes.

Q.59. And you think that check was issued that same day? A. Yes.

Q.60. Do you recall whether you went back to your office and got it? A. That would be my recollection, on seeing the date of the check.

Judge Henson: I wish to introduce Defendants' Exhibit 94.

(Which said Defendants' Exhibit 94, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

THE HOME INSURANCE COMPANY, NEW YORK

No 7166 NEW YORK MAY 2 1935 19

TITLE GUARANTEE AND TRUST COMPANY
170 BROADWAY
NEW YORK CITY

PAY TO THE ORDER OF Charles R. Street, Chairman

[illegible] 15000 23 00 CTS. DOLLARS

$ 15,000.00

Pay to the order of R.J. Tolerton, Atty
Charles R. Street
Chairman

R.J. Tolerton Atty
Title Guarantee & Trust Co.
Law Dept.

FOR DEPOSIT ONLY
THE NORTHERN TRUST COMPANY
CHICAGO

for deposit
Make Settlement

2-28
MAY
1935
CHICAGO ILL.

2906

D 946

Q.61. (By Judge Henson) I show you Defendants' Exhibit 95, a check for $28,682.14. That is dated in March, 1936. I assume that was when the rest of the payment was made there to Mr. Street's account? A. Yes.

Q.62. I believe you signed this check? A. Yes.

Q.63. I will ask you now whether this Exhibit 95 is a photostatic copy of that check made in March, 1936? A. Yes.

Q.64. Signed by you; and that includes the endorsements? A. Well, I haven't seen the endorsements.

Q.65. Well, that apparently is the endorsement.

Mr. Murphy: It may be agreed that they are the endorsements.

Judge Henson: All right, it will be agreed that they are. I now introduce Defendants' Exhibit 95.

(Which said Defendants' Exhibit 95, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

THE HOME INSURANCE COMPANY
SPECIAL ACCOUNT NO. 3

No. 1 NEW YORK March 23rd 1936

THE COMMERCIAL NATIONAL BANK AND TRUST COMPANY 1-125
OF NEW YORK
60 WALL STREET

PAY TO THE ORDER OF C. R. Street Agent ... $28 682.14

ACTIVE 28682 14 CTS

THE HOME INSURANCE COMPANY-SPECIAL A/C #3 DOLLARS

Secretary

President

C. R. Street agent

FOR DEPOSIT WITH THE NATIONAL BANK OF THE REPUBLIC AND TRUST COMPANY OF CHICAGO

THROUGH CHICAGO CLEARING HOUSE

P 11 M

MAR 24 1936

RECEIVED PAYMENT
THROUGH NEW YORK CLEARING HOUSE
PRIOR ENDORSEMENTS GUARANTEED
MAR 25 1936
CHASE NATIONAL BANK
NEW YORK
No. 74

21EN

2 95 Cks

430

Q.66. Now, I show you Defendants' Exhibit 96 and ask you to tell us what this is? A. This is the order for the check.

Q.67. Who made that order? A. Initialed by me.

Q.68. You made that order for the check and it bears date of May 2, 1935? A. Yes.

Q.69. That is a photostatic copy of your order left there in the files? A. Yes.

Mr. Henson: I wish to introduce Exhibit 96.

(Which said Defendants' Exhibit 96, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

5/2/35

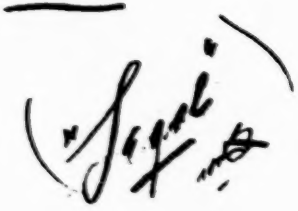
Check to order of

Charles R. Street, Chairman

$15,000.

Advance on Missouri Refund Case

Home



D-96

Q.70. Now, I show you Exhibit 97 and will get you to state what that is. A. That is the office order for a check.

Q.71. For how much? A. For $15,000.00.

Q.72. That is the same $15,000.00 check that is Exhibit 94? A. Yes, sir.

Judge Henson: I wish to introduce Exhibit 97.

(Which said Defendants' Exhibit 97, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

ORDER FOR DRAFT OR CHECK Cashier's DEPARTMENT VOUCHER

Title

THE Home INSURANCE CO. PAID [illegible] No. 7166

DATE 5/2 1935

434

PAYEE Charles R Street, Chairman

CHARGE TO ACCOUNT OF

Legal

PAID
MAY 2 1935
THE HOME INSURANCE CO.

IN PAYMENT OF

Ms. Refund Case

HS

PAID
WILFRED KURTH, President

TOTAL 15.000 00

VOUCHERED	CORRECT	APPROVED
J.D. Thompson	H.B. Reinhardt SUPERVISOR.	T.R. Street OFFICER
	$ 15000.00	

D 975

DRAFT IN PAYMENT OF THIS VOUCHER WILL BE MAILED BY OFFICER SIGNING SAME.

Q.73. Now, what is this Exhibit 98? A. This is an order for $28,682.14, payable to C. R. Street, Agent, or a check payable to his order.

Q.74. That is March 23, 1936? A. Yes.

Judge Henson: I wish to introduce Exhibit 98.

(Which said Defendants' Exhibit 98, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

ORDER FOR DRAFT OR CHECK ~~Cashier's~~ DEPARTMENT VOUCHER

THE Home INSURANCE CO. PAID [illegible] No. 1

DATE Mar 23 1926

PAYEE C.R. Stuart, Local Agent

CHARGE TO ACCOUNT OF

Home Agents A/C #3. (Comm'n B'ds)

IN PAYMENT OF

PAID MAR 23 1926 THE HOME INSURANCE CO.

TOTAL $28,687.14

VOUCHERED	CORRECT	APPROVED
	$28.687.14	
	SUPERVISOR.	OFFICER.

DRAFT IN PAYMENT OF THIS VOUCHER WILL BE MAILED BY OFFICER SIGNING SAME.

Col. 2M-7-25

$ 98.

436

Q.75. I notice this order was made here to pay to C. R. Street, Trustee, and then the line is drawn through that and the word "Agent" put after it. Do you recall anything about how that occurred or why? A. Unless the impression first was that it was to be made to him as trustee and it was later changed to agent. I don't recall.

Q.76. Do you know why that change was made? A. No.

Q.77. Don't you know, as a matter of fact, if it was made to C. R. Street, Trustee, it would have to be accounted for with the 30 per cent impoundment? A. I don't know. No, I don't, as a matter of fact, know that.

Q.78. Then when you made this order for the check to Street, Agent, changed "Trustee" to "Agent," the check, Exhibit 95, was made the same way, wasn't it, "C. R. Street, Agent"? A. Yes.

Q.79. Now, have you any other explanation as to why that was made—that large check was made to C. R. Street, Agent? A. Instead of "Trustee," you mean?

Q.80. Yes, sir. A. No, unless it was so requested.

Q.81. Well, whose agent was Mr. Street? You made a check now to C. R. Street, Agent, for $28,000.00. A. I suppose his request was based upon the fact it was separate from a personal account.

Q.82. Well, the word "Agent" means what is naturally implied and you intended it to mean that? A. Well, there is a distinction between a personal check and one that isn't personal.

Q.83. You intended that he should be your agent in the disbursement of that fund, didn't you, the $28,000.00? A. Well, he asked for certain sums and we paid it. If he asked us to make it payable to him other than as an individual, we would comply with the request.

Q.83½. Now, Mr. Kurth, the $15,000.00 check, I notice, was made to Charles R. Street, Chairman? A. He was chairman then of the Subscribers' Committee, I believe.

Q.84. Yes. That was made payable then to Charles R. Street. Now, you have explained why the $15,000.00 check was made. Have you any other explanation to make as to why the $28,000.00 check was made? A. That represented 5 per cent, that $28,000.00 plus the $15,000.00, as I recall it, represented 5 per cent of our impoundings.

Q.85. Did you understand your company and all others were giving 5 per cent to Mr. Street as agent?

A. Yes. The detail as to how it was made payable seemed immaterial to us.

Q.86. At all events, these two checks were made for these sums of money? A. Yes.

Q.87. They came into Mr. Street's hands? A. Yes.

Q.88. Was any explanation made by Mr. Street as to what these expenses were to be, either or both of them? A. The first one was a substitute request for a sum in lieu of getting it from all of the interested companies, over a hundred, I believe, in order to avoid the detail. The second, I suppose, looking back now, if we had had the decree of the Court before us and the fact that someone allocated 30 per cent for distribution through Street as trustee—

Q.89. (Interrupting) Street and Folonie? A. Or Street and Folonie, and—well, those two facts, if those came up and they were considered, I suppose the point would be raised as to why it was done that way, but to me it just appeared as here was a remittance on account of the Missouri impoundings and a request for a return of part of it.

Q.90. Can you give any further explanation as to the term "legal fees" that he was talking about than what you have already given? A. No.

Q.91. Did you ask him what particular legal fees? A. No.

Q.92. Did you ask him if it was for your lawyers? A. No.

Q.93. Did you think it a little unusual that when you paid this $15,000.00 that you would be paying your lawyers right before a settlement instead of immediately afterwards? Did that occur to you as unusual? A. No. I want to make it clear that when Mr. Street suggested a certain course of action, he being the key man in this Missouri litigation, his requests were acted upon.

Q.94. You gave these checks then to him and trusted him to make the distribution and disbursement? A. Yes.

Q.95. And whatever he did was all right with you? A. It certainly was.

Q.96. Mr. Kurth, did you know about the decree —you mentioned it a while ago—the federal court gave about the 1st of February, 1936, that there was provision made there for lawyers' fees? A. Well, there was somebody's guess that 30 per cent might cover it, but there was no guarantee that that would be the entire cost, and, in

fact, even now if there are additional costs that are not within the 30 per cent, we would be liable for them.

Q.97. But when you were called on for the $28,000.00 check, you got a check for 11 per cent of your impoundment, didn't you, out of the 30 per cent? A. Well, as I said before, when that 11 per cent came in, that was all Missouri impoundings case, and if 5 per cent was to go back, it went back. There was no distinction in my mind, as I recall, where the 11 per cent came from. It was a remittance.

Q.98. Didn't it seem strange to you that they wouldn't have just sent you 6 per cent instead of 11 and 5 back? A. I never considered that matter.

Q.99. The 11 per cent came from trustees, didn't it? A. Well, it came from somewhere, I don't know. I couldn't swear now where it came from. As I said before, in my mind we got 11 per cent from the Missouri impoundings. I am not clear until now where that came from, but when they asked for 5 per cent back, it seemed perfectly all right to me.

Q.100. Who do you mean, "they" asked for 5 per cent back? A. The request from Mr. Street.

Q.101. Did Mr. Haid or someone from his office come in and ask for this $28,000.00 check in 1936? A. I am not so clear about that, whether it was done. The request came through here or from Mr. Street or through the Subscribers' Committee direct.

Q.102. Was there any letter in the files direct that called for this, any letter to your company making this request for the $28,000.00? A. I don't recall any.

Q.103. You think it was all done verbally on the telephone or otherwise, or messenger? A. Yes.

Q.104. That is your best memory? A. That is my best recollection.

Q.105. Do you know any reason why it should have been done that way instead of by transmittal letters which would show just what it was? A. Further than that this was all preliminary to a final settlement and accounting.

Q.106. The $28,000.00 was paid after the settlement had been approved by the federal court, as you understood it? A. Well, let's see.

Q.107. I don't want to take any advantage of you, but your check for $28,000.00 was March 3, 1936, some six or seven weeks after the federal court had approved the settlement. A. Well, then that is the fact.

Q.108. There is no letter of transmission anywhere or letter demanding it or letter from your office transmitting $28,000.00 by which you have a copy of it or any record further than bookkeeping record, is there? A. I don't know of any. Is this the complete record?

Q.109. I think it is. A. Well, then that must be the fact.

Q.110. Did you make any memorandum of the New York meeting when the whole group was there on May 2, 1935? A. No.

Q.111. Did anyone make a memorandum of it, so far as you know? A. Well, I can only speak for myself.

Q.112. Did you go back to your office and make a memorandum of it and put it in your files? A. There is the memorandum, the only memorandum I recall making was the order for the check.

Q.113. Did anybody else in your office know about this first payment of $15,000.00 which you were to have the benefit of a credit of it of other amounts that you were to pay? Did anyone but you know about that? A. Only as it went through the office routine.

Q.114. Well, there is nothing in these photostats, is there, that shows what that part of the agreement was, that you paid $15,000.00 and you were to have the benefit of that on any other assessments, if so?

Mr. Murphy: He didn't say that.

Judge Henson: All right.

Mr. Murphy: He said Mr. Street told him he would make a full accounting.

Q.115. (By Judge Henson) Well, I want to know whether it is a fact that when you paid the $15,000.00 on May 2, 1935, if you didn't testify and if it isn't a fact that Mr. Street assured you that you would have the benefit of that on any further assessment; you would have a credit for that on any further demand made? A. In the final cleanup of the accounting.

Q.116. You were to have the benefit of that and did get the benefit? A. Oh, yes.

Mr. Murphy: Not of any further assessments, Mr. Henson.

The Special Master: No, in the final accounting he would be given a credit.

Mr. Murphy: That assumes there was to be a further assessment.

Judge Henson: Well, I will stand corrected.

Q.117. Now, is there anything in the files, and if so, show me, where there is any record of that feature of the understanding with Mr. Street that you were to have any benefit of a credit for the $15,000.00 advanced? A. Well, I had knowledge of the fact.

Q.118. You knew it? A. Yes.

Q.119. Suppose you had died, who would have had the benefit of that knowledge to have kept them from assessing you $43,000.00 instead of $28,000.00?

Mr. Murphy: That assumes there was—

A. (Interrupting) That assumes there was a bunch of crooks. We were dealing with honorable people, as we supposed, and if they would give us a statement they would account for something, for money they asked from us, then we certainly would expect it.

Q.120. (By Judge Henson) Mr. Kurth, in the conduct of large insurance companies like that, and you have problems, it is usual to make a memorandum of the transaction, isn't it? A. There is the memorandum, the request for the check.

Q.121. The request for the check? A. Yes.

Q.122. That is all the memorandum there is? A. That is all.

Q.123. Did your board of directors meet after you issued this $15,000.00 check? A. Oh, yes, monthly.

Q.124. Did you tell your board of directors anything about what you had done? A. From time to time we mentioned the fact that the progress or lack of progress on the Missouri rate case—

Q.125. (Interrupting) Did you tell your company you had used $15,000.00 of their funds to pay Mr. Street for legal fees in this settlement? A. Specifically, no. That is part of the executive's duties and prerogatives.

Q.126. Then when you got to where you issued the check in 1936 for $28,000.00, did you report that to your board of directors? A. Not specifically, no.

Q.127. Did you anyway— A. (Interrupting) As I said, from time to time we reported on the state of the Missouri rate litigation.

Q.128. But did you tell your board of directors that you had issued a check for $28,000.00 which, with a check of substantially a year before, would make $43,000.00 for the companies? A. No.

Q.129. You never told them? A. No.

Q.130. And you left no memorandum of that $28,000.00 transaction either in the files? A. Except what is there.

Judge Henson: Except what is there. That is all.

Cross Examination by Mr. Murphy.

XQ.131. Mr. Kurth, how long did that meeting in May, 1935, last? A. That was the first meeting?

XQ.132. Yes. A. Well, I should say perhaps fifteen minutes.

XQ.133. Mr. Henson asked you if it wasn't a fact that whatever Mr. Street did with this money was all right with you, and you said, "Yes"?

Judge Henson: That is what he said.

Mr. Murphy: Yes. What I meant was—

Judge Henson (Interrupting): Now, wait a minute.

A. I have also stated on his assurance that there was going to be proper accounting for it.

XQ.134. (By Mr. Murphy) Yes. Well, you supposed he would make proper use of it? A. Why, of course.

XQ.135. A $15,000.00 disbursement is relatively a very small disbursement made by the Home Insurance Company, considering its annual disbursements? A. We pay out $100,000.00 a day in losses alone.

Mr. Murphy: I believe that is all.

Re-Direct Examination by Judge Henson.

RDQ.136. When you pay out $100,000.00 a day in losses, you have proofs of losses, haven't you, and affidavits that you had the loss or a judgment rendered by some court? A. We have the O. K. of the head of the loss department that this amount is payable.

RDQ.137. But they have all the proof of loss so that you know you are really paying for a loss? A. Presumably, and that would be subject to the annual audit by the auditors.

RDQ.138. And on your loss claims you have files that give the complete story, don't you, either in your office or in the western office, don't you? A. Yes.

RDQ.139. But on a matter of this size, why, this small file is all you have? A. If you will notice from the sheets you have there, that the whole Missouri transactions were in a suspense account; that they didn't enter into the regular books of the company because, you ask why, the answer is, that until we had a final settlement and accounting so that we could properly allocate the various funds, it was kept in this suspense account.

RDQ.140. I thought you said it was for legal expenses? A. That is the way it was charged up, yes.

RDQ.141. Then why would you have to have it on suspense? What suspense would there be about it? A. The final accounting.

RDQ.142. What final accounting? A. As to the disposition of the funds.

RDQ.143. Well, by that you mean to whom it was paid? A. The report of Mr. Street, the accounting of Mr. Street.

RDQ.144. Did Mr. Street ever make an accounting? A. Not that I recall, no.

RDQ.145. Did you ever ask him for any details or anything further about it? A. You must remember, Mr. Henson, shortly after—let me see—I was in the hospital pretty near a year shortly after this thing came on and, yes, that was '37, and I was away from the office practically a year.

RDQ.146. When did you go to the hospital? A. In July of 1937.

RDQ.147. All right, this $28,000.00 check was issued March, 1936? A. Yes.

RDQ.148. Now, after the issuance of that $28,000.00 check, did you see Street from then until the time you went to the hospital? A. Probably did.

RDQ.149. If you saw him, did you ask him about this money? A. If I saw him, I didn't ask him.

RDQ.150. Why wouldn't you ask him? A. That is a matter of routine, this accounting. On his assurance of a proper accounting of the funds, that matter takes its regular course.

RDQ.151. All right, but on your books you had to hold this item in suspense, not knowing where to charge it, until you got his report; that is what you testified? A. Well, it was closed out before the end of the year with the transactions up to that time, because we couldn't keep a suspense account over the yearly account.

RDQ.152. That is what I thought, and then when you did close it out, did you get the information as to what the money was used for? A. No, we charged it all for legal.

RDQ.153. Right where he said to begin with, it was legal expense, didn't he? A. Yes.

RDQ.154. How much money was raised at that meeting that lasted fifteen minutes? A. I don't recall.

RDQ.155. You don't recall any other company's amount? A. No.

RDQ.156. The amounts evidently were fixed at that meeting because your check was issued at your office after the meeting, the same day of the meeting? A. Yes.

RDQ.157. There wasn't any doubt about how much your company was to pay, was there? A. Not the slightest.

Judge Henson: All right, I believe that is all.

Mr. Murphy: I think that is all.

The Special Master: Mr. Kurth, when Mr. Street said he wanted this for legal expense, that was when he got the first money?

A. Yes.

The Special Master: When he got the second 5 per cent, that is including the first amount, did he say anything to you at that time about what that was to be for, outside of just legal expense?

A. Just a remittance on account, subject to proper accounting.

The Special Master: Never said what it was to be for at all?

A. No.

The Special Master: And meanwhile he was paying you 11 per cent at the same time he was asking 6?

A. Yes.

The Special Master: He didn't tell you what that was for at all?

A. Just he wanted it.

The Special Master: He got it on the theory he was going to get up a full statement?

A. Oh, yes, by the end of the year.

The Special Master: But he didn't?

A. No.

The Special Master: Nobody ever asked him to?

A. Well, I didn't. I don't know about anyone else.

The Special Master: Well, your head accountant, when he got ready to close up the account, you had handled it, did he come to you, ask you about it?

A. Yes, we allocated the difference between the cash received and the 80 per cent as legal.

The Special Master: And closed it out that way at your directions?

A. Yes.

The Special Master: Meanwhile you hadn't any further communication with Mr. Street to find out whether that was right or wrong?

A. No.

The Special Master: What made you close it out when you didn't know?

A. We had to. We couldn't carry a suspense bank account over the year end. We had to account to the state department.

The Special Master: I know you do, but that wouldn't keep you from making an inquiry to find out what was the right way to handle it. Now, I understand you told the accountant what to do without finding out what was the right way?

A. That wasn't a final accounting, anyway. There have been charges since.

The Special Master: Mr. Kurth, you were getting ready to close out the book transaction and the accountant didn't know a thing about it. He had to rely on you and you told him how to handle it, but you didn't even ask Mr. Street whether that was the right way or not. How did that happen?

A. Well, we go back into that. I asked in Chicago if the accountants there wouldn't get up some formula for treating this thing, but didn't meet with any success. My concern—one of the concerns was that in view of the penalties for non-reporting of premiums written in Missouri, I wanted to make sure that those premiums would be reported to Missouri for taxation, the 80—

The Special Master: I understand the time had come, that under the rulings and regulations of the various states you had to do something with that item?

A. Yes.

The Special Master: I understand that, and, of course, the accountant couldn't do it because he didn't handle it and he had to ask you. Now, the way I understand you, you told him how to do it without finding out what it was or making any inquiry from Mr. Street?

A. This wasn't a final settlement at the end of the year.

The Special Master: It was a final settlement to the department as to what that was?

A. Oh, yes, final, subject to further charges, too.

The Special Master: Yes, I know, but you were reporting it to the states and he was asking you what to

do with it and you told him how, without even asking the man that handled it; is that right?

A. That is the fact, but that sounds pretty narrow.

The Special Master: I know it does.

A. A narrow view of it.

The Special Master: I know it does, and I think it requires more explanation.

A. With 40,000 agents and 4,000,000 policies issued each year, with the supervision of twelve companies, you don't sit down and study from a legal aspect what is to be done with every transaction.

The Special Master: No, you don't; you leave it to other people, but this time you saw fit to handle it yourself; that was the difference.

A. Because I was the officer in charge and had attended these meetings with Mr. Street. That was the logical method to pursue.

General Bullitt: Having received the information from Mr. Street that it was legal expenses, having carried it in suspense to the end of the year, when you have to close the books, it wasn't necessary to go back to Street and say this: "Was it for legal expense?" The only thing you had to do was to close it on the books and charge it against such information as he had already given, namely, expenses or legal expenses of the Missouri litigation, and carried over to the end of the whole windup, and we haven't yet had an accounting of that fund as yet.

The Special Master: I understood the only information he had was that he was to get a report later, and he hadn't gotten it.

General Bullitt: He said there would be an accounting ultimately, but it was charged up to expenses or legal expenses at the time. That is all.

(Record of account, handed to the reporter, was marked for identification as "Plaintiffs' Exhibit 1, EFM.")

Re-Cross Examination by Mr. Murphy.

RXQ.158. Look at Plaintiffs' Exhibit 1, Mr. Kurth, and tell us what that is. A. That is the entry of the first $15,000.00.

RXQ.159. And when was that made, relative to the time that the payment of the $15,000.00 was made? A. That would be made at the time, immediately following that.

RXQ.160. Is it or is it not a fact that your company kept this entire Missouri impounding in a separate bank account and in a separate suspense account? A. Yes.

RXQ.161. And as moneys were paid out of that account, you credited the account? A. Yes.

RXQ.162. And as moneys came in, you charged that account? A. Yes.

RXQ.163. And is that suspense account, what did you call that account, Special Account No. 3? A. Special Account No. 3 in the bank.

RXQ.164. Is that account still in existence or has it been closed out? A. That has been closed out.

RXQ.165. Can you tell us about when or will we have to get the accounting? A. That would be closed out before the end of the year, then the entries onto the regular books.

RXQ.166. You didn't have any money in that account in 1935, did you? A. No.

RXQ.167. And when the distribution of the 45 per cent which has been referred to as 50 per cent was made, you deposited that in that account? A. Yes.

RXQ.168. And then charged the 1936 expenditure, twenty-eight odd thousand dollars against that account? A. Yes.

RXQ.169. And the 11 per cent you credited to that account? A. Yes.

RXQ.170. Did you charge on your books the entire 30 per cent to legal expenses? A. That is 30 per cent of 80 per cent?

RXQ.171. Yes. A. Yes.

The Special Master: No, 30 per cent of the whole.

Mr. Murphy: Well, it figures out 30 per cent of the 80 per cent, or 24 per cent.

The Special Master: The allocation in the court order was 50 per cent, 30 per cent and 20 per cent.

Mr. Murphy: I am talking about how they carried it on their books. They carried the whole 80 per cent as premiums received and then deducted from that the legal expense. It was either 24 per cent or 30 per cent. You can get the accountant over here.

The Special Master: If they carried any 24 per cent they didn't regard any court order because the court order was 30 per cent of the whole.

Mr. Murphy: Yes, to the trustees.

The Special Master: Yes.

RXQ.172. (By Mr. Murphy) Do you know whether it was 30 per cent of the whole that you carried on your books as legal expense or— A. (Interrupting) It was the difference between the 80 per cent of the impoundings and the cash received was charged to legal.

RXQ.173. And then when there were debits and credits, those were written on the books and that account was closed out by December 31, 1937? A. Yes.

Mr. Murphy: I will offer Plaintiffs' Exhibit 1 in evidence.

(Which said Plaintiffs' Exhibit 1 (said exhibit having also been identified as Defendants' Exhibit 99) so offered in evidence, is in words and figures as follows:)

Defendants' Exhibit No. 99 is page from the cash book of the HOME INSURANCE COMPANY showing an entry of May 2, 1935—

"Legal

Charles R. Street Chairman Mo
Refund Case $15,000.00."

RXQ.174. There never was any final settlement made either by the trustees or by the custodians? A. No.

RXQ.175. And as you understand it, there were substantial amounts of money before you restored the moneys you got to the custodian, both in the custodian's hands and in the trustees' hands for the company? A. Yes.

RXQ.176. And there never was any final settlement of that matter by either the trustees or the custodian? A. No.

RXQ.177. Do you remember when Mr. Street died? A. I couldn't give you the date.

RXQ.178. Early in 1938, wasn't it? A. I would agree to that. I wouldn't recall the date.

RXQ.179. You never demanded any special accounting from him or from the trustees or the custodians? A. No.

Mr. Murphy: That is all.

Re-Direct Examination by Judge Henson.

RDQ.180. You say that suspense account at the bank was closed? A. Closed out before the end of the year in order, as I said—

RDQ.181. (Interrupting) The end of what year? A. 1937.

RDQ.182. Why was that account closed? A. We had to, as I explained before, get it onto our regular books in order to properly account to the state department.

RDQ.183. Is this the only item of business you can think of in the last 3 or 4 years past that has been on suspense? A. No.

RDQ.184. Then you would need that account for other items on suspense? A. We would open separate accounts. We have what is known as a No. 2 account.

RDQ.185. This was opened as a special account? A. Yes.

RDQ.186. Why wasn't that opened in 1935, or was it? A. We had no money to put in there in 1935.

RDQ.187. What did you do with the $15,000.00 that you paid out in 1935? A. That came out as a regular account.

RDQ.188. Right out of the assets of the company? A. Yes.

The Special Master: Just general office expense, wasn't it, home office?

A. Legal expense.

RDQ.189. (By Judge Henson) If I understand you, Mr. Street told you this $15,000.00 was for legal expense and later on when your accountant wanted to know how to place that, you told him to place it as legal fees or legal expenses? A. Yes.

RDQ.190. You knew just as little about it when you answered the accountant as you did when Mr. Street told you, didn't you? A. Yes.

RDQ.191. You gained no information in the meantime? A. No.

RDQ.192. I think you said something about you had been trying to get out of Chicago what this was about so as to help? A. No, no.

RDQ.193. I want to be right. A. If you will recall, at the meeting of the Governing Committee in Chicago I brought up the subject as to whether the accountants and the lawyers shouldn't agree upon some formulaes as to how this whole transaction was to be accounted for.

RDQ.194. Did you bring that up in Chicago relative to this Missouri account or generally? A. The Missouri refund.

RDQ.195. All right, go ahead. A. And in order that there might be uniformity and as I said before, having in mind our fears of the penalty resulting from not reporting to Missouri the impounded premiums for taxation purposes, having had some experience with the Missouri department.

RDQ.196. Well, smile if you want to; I didn't belong to it then. A. They are a pretty hard boiled crowd out there and that was one thing I had in mind, to forestall, if it were possible. However, different ideas prevailed amongst the accountants and nothing came of it, so we were left to our own decision as to how to account for it.

RDQ.197. This governing body that met in Chicago, you tried to find out from them about how to make this charge? A. Asked their accountants if they couldn't agree on something.

RDQ.198. Why didn't you go to Mr. Street? He lived in Chicago. Why didn't you go to him? A. Well, he was sick then. He wasn't around. I didn't see Mr. Street for, oh, I would say at least a year.

RDQ.199. Mr. Folonie, your lawyer, was there. Why didn't you go to him? A. This was a meeting that I was attending, and I raised it as a question that could be discussed amongst insurance officials that were in charge in the West. It was an accounting matter that didn't enter into the question of the merits of the case or the legality of the case. It was simply a request to see if the accountants couldn't develop a uniform method for treating this thing.

RDQ.200. Mr. Kurth, isn't it a matter of fact, you suspected that it wasn't legal fees and you didn't want to make any further inquiry? A. Not at all, emphatically no.

RDQ.201. You never at any time suspicioned that any of these funds would be used to corrupt officers in Missouri? A. Not at all, at no time.

RDQ.202. When did you find out, if you did find out, that that was the fact? A. When I went out to Kansas City?

Mr. Murphy: That was in 1939?

A. In 1939.

RDQ.203 (By Judge Henson) 1939. Did you ever ascertain whether any of your funds there, this $43,000.00 out of the Home company and $4,200.00 out of the National Liberty, making $47,000.00, did you ever

ascertain whether any part of that was used in corruption or not? A. No.

RDQ.204. You haven't any curiosity about it? A. Well, that is a peculiar question. Naturally we had curiosity as to the whole affair as it developed in the newspapers in Kansas City.

RDQ.205. Do you know whether any part of this $47,000.00 that includes the National Liberty's 5 per cent— A. (Interrupting) No, I don't know.

RDQ.206. You don't know whether that went to corruption or not?

RDQ.207. And don't care? A. Wait a minute, now.

RDQ.208. Have you tried to find out? There would be sources by which it could be found. Have you tried to find—

Mr. Murphy (Interrupting): What sources?

RDQ.209. (By Judge Henson) Well, you could have gotten it from Milligan, the District Attorney. You talked to Milligan, the District Attorney? A. Yes, I answered questions for him, largely.

RDQ.210. Did you talk to Al McCormack? A. No.

RDQ.211. Were you introduced to Al McCormack? A. I wouldn't know Al McCormack if I saw him.

RDQ.212. Were you introduced to him while you were down there at Kansas City? A. No.

RDQ.213. You testified before the grand jury, I believe? A. Yes.

RDQ.214. The federal grand jury? A. That is all.

The Special Master: When did you find out that Mr. Street had cancer? When did you first find out he was a sick man? A. I don't recall.

The Special Master: Can you give me any kind of a rough estimate at all compared to when he died?

A. He died in '38.

The Special Master: Yes.

A. And from July of 1937 for practically a year I was away from the office. Now, he died while I was away from the office.

The Special Master: Did it ever occur to you that the fact a man had a fatal malady was a reason why you should urge him to get in his reports?

A. Yes, sir.

The Special Master: You knew he would die?

A. Well, we all knew it.

The Special Master: You knew he was gone?

A. No, I had no special knowledge he was so gravely ill.

The Special Master: Until he died?

A. Until he died.

The Special Master: Did you ever hear the rumor he was in trouble with the federal authorities about his income tax over this insurance settlement?

A. Afterwards, yes, long after.

The Special Master: I know, during his lifetime he had trouble. Did you hear about that during his lifetime?

A. No.

The Special Master: All right.

Re-Cross Examination by Mr. Murphy.

RXQ.215. Look, Mr. Kurth, at Defendants' Exhibit 96. I believe you testified that that was a copy of the order that you made for the check? A. Yes.

RXQ.216. That is the $15,000.00 check on May 2, 1935. Whose handwriting is that? A. That is Mr. Schulte's.

Judge Henson: You are referring to the word "legal"?

RXQ.217. (By Mr. Murphy) Who is Mr. Schulte? A. He is vice-president.

RXQ.218. Is he the head of the accounting department? A. Yes.

RXQ.219. Was that put on there at the time or do you know? A. Yes, because you will notice in this slip, Exhibit 97, that he made out, is dated the same day, May 2nd, and there are the words "Charge Account Legal."

RXQ.220. So that $15,000.00 was allocated to legal expense on the day the order for the check was given and on the day the check was issued? A. Was drawn, yes.

Mr. Murphy: Show that the document Mr. Kurth referred to was Exhibit 97.

The Special Master: Did you ever see the terms of the settlement of the rate case?

A. The final court order?

The Special Master: Yes, or the contract of settlement, either one.

A. I don't recall seeing them.

The Special Master: Either one of them?

A. No.

Re-Direct Examination by Judge Henson.

RDQ.221. Mr. Kurth, on Exhibit 96 you said that word "legal" put on there, Mr. Schulte wrote this word "legal"? A. Yes.

RDQ.222. You were present at the time? A. Presumably. My guess or my belief as to the course of that thing, I sent that up to Mr. Schulte, that order that you see there, and he came back and asked to know what to charge it against, and I told him legal, and he probably wrote it down there.

RDQ.223. You evidently told him legal? A. Yes.

RDQ.224. At that time, on May 2, 1935, and he wrote it in there, initialed it on your memorandum? A. Yes, that is his order.

RDQ.225. Is he the same fellow that asked you after a while what to do with this expense item, Mr. Schulte, is that the same man? A. Yes.

Mr. Murphy: You mean the 1936 expense item?

RDQ.226. (By Judge Henson) Well, the 1936 item? A. Yes.

Judge Henson: He asked you about that. That is all, I believe.

Mr. Murphy: That is all.

(Witness excused.)

JOHN R. VAN HORNE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your full name, please. A. John R. Van Horne.

Q.2. What is your connection with Globe & Rutgers Insurance Company? A. I am secretary of the company.

Q.3. What was your connection in 1935 and 1936? A. I was resident counsel.

Q.4. Then as counsel you were familiar with the rate litigation pending in Missouri? A. Yes.

Q.5. You knew that a contract of settlement was made in May of 1935? A. I knew that a settlement had been made in May, 1935.

Q.6. And you were familiar with the terms and provisions of that contract of settlement? A. Only in general.

Q.7. You knew that 20 per cent went to the policy holders? A. Yes.

Q.8. And 30 per cent was allocated for the payment of attorneys' fees and expenses? A. That is correct.

Q.9. And 50 per cent was to go out outright to the companies from the custodian? A. That is correct.

Q.10. Did you learn anything about a fund of $100,000.00 being raised during the month of May, 1935? A. We knew nothing of that fund being raised.

Q.11. When was the first time you ever heard of that? A. Recently in the public press.

Q.12. In 1936 were you in the offices of the company? A. Yes.

(Instruments, handed to the reporter, were marked for identification as "Defendants' Exhibits 100, 101 and 102, EFM.")

Q.13. I hand you Defendants' Exhibit 100, which purports to be a memorandum signed by you. You recognize it as such? A. Yes, I prepared it, dictated it.

Q.14. It is dated March 25th, 19— A. (Interrupting) March 23rd.

Q.15. March 23, 1936? A. Right.

Q.16. To George C. Bowers; who he is? A. He is the comptroller of the company.

Q.17. Just tell how you happened to make that memorandum and what facts you know in connection with it. A. Well, the purpose of the memorandum was to show the disposition of a check which was brought into the office and delivered to Mr. Hubbard by Mr. Paul Haid, and Mr. Hubbard sent for me and handed me the check and said, "This is a rehabilitation item. Mr. Haid wants a check to the order of C. R. Street, Agent, for the sum set forth there 5 per cent of our Missouri impoundings."

Q.18. For the record that is $2,852.81? A. Right. I went out and had the check prepared, had it signed by Mr. Hahn, a secretary, and by Mr. Hubbard, the president, and came out and dictated that memorandum to Mr. Bowers, the comptroller.

Q.19. Were you present when Mr. Haid had called to see Mr. Hubbard? A. No, I was in the room when Mr. Hubbard sent for me. Mr. Haid was there.

Q.20. What conversation did you hear between Mr. Haid and Mr. Hubbard? A. None.

Q.21. They were in there together when you came in? A. Yes.

Q.22. And then Mr. Hubbard gave you certain directions and you understood you were to make a memorandum and those were the directions? A. That is right.

Q.23. You were then counsel for the company? A. Resident counsel.

Q.24. Resident counsel for the company? A. Yes.

Q.25. Of course, you knew that 30 per cent had been allocated for the payment of expenses, as you have testified? A. Yes.

Q.26. When you saw that 11 per cent had come out of this 30 per cent fund, you recognized that as a dividend out of the 30 per cent? A. As a distribution by the trustees.

Q.27. You also had in mind at that time about the payment of expenses; you knew that? A. The trustees were to pay expenses and I presumed to account at the end.

Q.28. When you saw that they were called upon to issue a 5 per cent check for legal expenses in connection with this Missouri rate litigation, did you as counsel say anything about that? A. No.

Q.29. To Mr. Hubbard? A. No, not at all.

Q.30. Didn't it strike you as strange that you would be paying out 5 per cent for legal expenses when you had just received 11 per cent from the 30 per cent fund which had been allocated primarily for that purpose, and the balance to go to the companies? A. I presume Mr. Street must have had some reason for making the request as chairman of the committee and the man in charge of the Missouri rate case.

Q.31. But you knew it was irregular? A. No, I did not.

Q.32. Well, you knew, didn't you, that ordinarily when this fund was in the hands of trustees for the payment of expenses that it would be used for that purpose and that there would be no dividends until the expenses had been paid? A. That is correct.

Q.33. Here was a situation where you got a dividend and then were called upon to give back 5 per cent of it? A. Well, the distribution which we received was by a check signed by two of the trustees.

Q.34. That is all they were? A. And the payment back was made to one individual as an agent. I have no knowledge as to why Mr. Street wanted this as a separate item.

Q.35. Did you make any inquiry? A. No, I didn't.

Q.36. Did you call to the attention of Mr. Hubbard that the trustees were supposed to do the accounting for this 30 per cent fund? A. No.

Q.37. You got no information as to why it came to Street as agent? A. I haven't the slightest knowledge.

Q.38. Do you know whose agent he was acting as? A. No, sir.

Q.39. Whom he was agent for? A. I presume, of course, as agent for the companies in the Missouri impounding case.

Q.40. And to the extent of this check, he was agent of your company? A. Correct.

Q.41. For the payment of these legal expenses? A. That is correct.

Q.42. Now, as counsel for the company did you undertake to look over the usual bills submitted for legal expenses? A. You mean in this matter?

Q.43. In any matter, all matters. A. In most matters they would come to my attention for examination and then be forwarded to general counsel for final approval.

Q.44. But in this you were not consulted about the legal fees? A. No. It was being handled by a committee.

Q.45. You don't know to whom they were paid? A. No, sir.

Q.46. Is Mr. Hubbard available? A. As far as I know. He is president of the Hanover Fire Insurance Company.

Q.47. He is not connected with the Globe & Rutgers? A. No.

Q.48. But he is in New York, as far as you know? A. Yes.

Q.49. When did he leave the Globe & Rutgers? A. October, 1938.

Q.50. Has there been any accounting for this check in your company since it was issued? A. Which check do you refer to?

Q.51. The $2,852.81 to C. R. Street, Agent? A. Nothing, except the receipt of a similar amount from Mr. Street in December, 1937, which we treated as an offsetting item.

Q.52. That was from the trustees, wasn't it? A. C. R. Street, I believe. The memorandum was signed "C. R. Street," I know that.

Q.53. I mean the 5 per cent that you received in December of 1937? A. That was a memorandum, carbon of a letter signed "C. R. Street," is my recollection.

Q.54. There was a check in there, was there? A. Yes.

Q.55. Payable to your company? A. For the same amount as the amount which we had drawn before.

Q.56. Don't you know that was from the trustees? A. My recollection is that the transmitting letter was signed by C. R. Street.

Q.57. Let me show you what I presume is a copy of your books of account to the entry in regard to the item received in December of 1937. A. That is correct —wait a minute, December, 1937? This is March, 1936.

Mr. Murphy: I don't think you have the 1937 books there.

A. March, 1936, check to C. R. Street, Agent, $2,852.81.

Q.58. (By Senator Hollingsworth) What does it say down here? A. "Trustees' Account, Missouri impounded rehab." It was charged against the 11 per cent check which was $6,200.00, which was received from the trustees, so that this $2,800.00 was charged in rehabilitation, which came under my personal supervision against that specific amount.

Q.59. We don't have 1937 here? A. I don't think you have 1937.

Senator Hollingsworth: That 1937 check, it will be admitted that that was from Street and Folonie as trustees?

Mr. Murphy: Yes, I think that is true.

Senator Hollingsworth: That will save recalling him.

Mr. Murphy: That is the fact.

General Bullitt: Street and Folonie as trustees sent you the 11 per cent and credited on your books and gave them back 5 per cent to the order of C. R. Street, charged against the same account?

A. That is correct, sir.

Mr. Murphy: He understood they were offsetting items and his company understood they were.

Judge Henson: As a matter of fact, they were Street and Folonie checks.

The Special Master: They have admitted that.

Senator Hollingsworth: That is all.

(Witness excused.)

Senator Hollingsworth: I want to offer in evidence Exhibits 100 to 102.

(Which said Defendants' Exhibits 100, 101 and 102, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

Trustees of - No Defense - Rebate

March 25, 1936.

MEMORANDUM

To: Mr. Geo. C. Bowers

From: John R. Van Horne

Re: Missouri Refund 16-2/3% Case

On March 23rd Mr. Paul Haid called to see Mr. Hubbard and left with him the attached check from R. J. Polonia and C. R. Street, Trustees, to the order of Globe and Rutgers Fire Insurance Company in the sum of $6,276.18, which he stated was 11% of the Missouri impounded premiums. Mr. Haid requested a check to the order of C. R. Street, Agent, for legal expenses, for $2852.81, which he stated represented 5% of the Missouri impounded premiums.

JOHN R. VAN HORNE

$1000 Ehg

6,276.18 = 11% of Rebate 57,056.18 (or 33 1/3% of 17%)
2,852.81 = 5% " " 57,056.18 (or 16 2/3% of 30%)

GENERAL ACCOUNT

GLOBE AND RUTGERS FIRE INSURANCE COMPANY
111 WILLIAM STREET, NEW YORK, N. Y.

9485

DATE March 23, 1936

AS PAYMENT IN FULL OF THE FOLLOWING ITEMS:

Legal Expenses A/C Amount Refund

PAY [redacted] DOLLARS $2,852.81

TO THE ORDER OF C.R. Street, Agents

TO BANK OF NEW YORK AND TRUST COMPANY
48 WALL STREET, NEW YORK, N. Y.

1-1

283

Pd Quitmeyer

RECEIVED PAYMENT
THROUGH NEW YORK CLEARING HOUSE
FOR ENDORSEMENTS GUARANTEED
THE NATIONAL CITY BANK
OF NEW YORK
MAR 25 1936
CLEARING HOUSE ASSOCIATION N.Y.

PAID THROUGH CLEARING HOUSE
P 11 M
MAR 24 1936

460

CHECK REQUISITION

DATE PAID MAR 23 1936

CHECK NO. 9485

CHECKED

HEAD OF DEPARTMENT

COMPTROLLER

DRAW CHECK FOR $ [illegible]

TO ORDER OF [illegible]

IN PAYMENT OF [illegible]

CHARGE TO Trustees % - Mo Dept Agric. - Bleach [illegible]

REQUESTED BY [illegible]

March 23 1936

1491

DISTRIBUTION

MAJOR CLASS	DEPT.	APPOR'T	ANNUAL STATE CLASS	STATE	SPEC. AGENT	AMOUNT	MAJOR CLASS	DEPT	APPOR'T	ANNUAL STATE CLASS	STATE	SPEC AGENT	AMOUNT

FORM 30-[illegible]-11-35

[illegible]

HAROLD T. CARTLIDGE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. State your name, please. A. Harold T. Cartlidge.

Q.2. Mr. Cartlidge, you live here in the City of New York? A. Yes, sir.

Q.3. Mr. Cartlidge, what is your connection with the Royal Insurance Company, Ltd., group? A. Deputy United States manager of the Royal Insurance Company, Ltd., and second officer with the affiliated fire and marine companies.

Q.4. Was that your position in 1935 and 1936? A. I think the title has been changed, but the position was the same.

Q.5. And your duties and prerogatives were the same? A. Yes, sir.

Q.6. This group consists of the Royal Insurance Company, Ltd., Federal Union, Liverpool and London, and Globe, Newark Fire, Queen and Star Insurance Companies? A. Those and one or two that you haven't mentioned.

The Special Master: They did include those, though? A. Yes.

Q.7. (By Senator Hollingsworth) Those other companies were not in the Missouri rate litigation? A. No.

Q.8. In the federal court litigation? A. Right. Well, let me check on that. Have you named them all that were?

Q.9. I think I have. A. I will have to just refer to the record because we had one or two companies that were not in the federal court, I believe. I believe it to be the Royal, Federal, Newark, Queen and Star, those are the ones you named. That is correct, sir.

Q.10. Now, in May of 1935 did you learn of any negotiations for a compromise of the Missouri litigation? A. Yes, sir.

Q.11. From whom did you first learn that? A. Mr. Street.

Q.12. Where were you when you learned it? A. In this room.

Q.13. How did you happen to come to this room? A. On the invitation of Mr. Haid.

Q.14. What information did Mr. Haid give you? A. Nothing except that my presence was requested, nothing other than my presence was requested in connection with the Missouri matters, as I recall it.

Q.15. Do you remember that date? A. Early in May, I think so, because I think—yes, sir, I think I am safe in saying it was May 2nd.

Q.16. 1935? A. 1935, I think so.

Q.17. And when you came up here, whom did you meet? A. I think Mr. Culver, Mr. Kurth, Mr. Haid, Mr. Street, Mr. Koop. I am afraid, sir, my memory fails.

Q.18. Do you remember Mr. Parsons? A. I can't recall that he was here.

Q.19. Mr. Barbour? A. I can't recall his being here.

Q.20. Mr. Koeckert? A. Mr. Koeckert, I think, was here, yes, sir.

Q.21. What was done at that meeting; what was said? A. I am afraid, sir, that I will have to give you the substance and the impressions more than the words. Mr. Street indicated that it seemed that there was now a possibility of disposing of the Missouri litigation on a basis which he believed would be quite agreeable to all of the companies involved, and—

Q.22. (Interrupting) Did he say what it was? A. Yes, sir. He didn't say definitely, but he said that he believed that if negotiations could be concluded on the basis on which they were now being then conducted, that a possible settlement of a refund of 10 per cent to the property owners—

Q.23. (Interrupting) With whom did he say he was negotiating? A. He did not say, to my knowledge.

Q.24. Didn't he mention anyone? A. Not to my knowledge, assuming again that it was the authorities of Missouri, presumably the Superintendent of Insurance, but that is an assumption.

Q.25. Go ahead.

Mr. Murphy: I don't think the witness finished.

A. It was necessary at this time to provide for certain expenses which had to be met before any settlement could be made.

Q.26. (By Senator Hollingsworth) What did he say about that? A. And rather than discuss the situation, which was delicate in the extreme, he thought—

The Special Master: Is that what he said or are you just describing it?

A. I am telling you, sir, not the words but the impressions because I can't recall the exact words.

The Special Master: I understand, but when you say, "which was delicate in the extreme," are you describing the situation or is that in substance what he said?

A. No, sir, in substance that is my impression from his conversation.

The Special Master: From his conversation?

A. Yes, sir, and that, rather than bring the matter before all of the companies that were involved in the federal case—this has all to do with the federal case.

Q.27. (By Senator Hollingsworth) Yes. A. He thought it better to discuss the situation with some of the principal companies involved in principal sums, and it was necessary that he be provided with funds at this time, and it was his intention to present the matter to those who were present in this room, and probably on the day following to companies domiciled in Hartford, Connecticut.

Q.28. All right, what else was said? A. Those who were present, to the best of my belief, all of them, and again I can't be certain, said each for himself, "Well, under the circumstances we will be glad to provide funds," each stating a definite amount. In our case I think that we definitely stated at that time that we would provide the sum of $10,000.00.

Q.29. What else do you have to say as to your recollection concerning this? A. That, so far as I can recall, is the substance of the entire proceedings.

The Special Master: Did he say how much money he had to raise, he wanted to raise?

A. I believe it had to be $100,000.00.

Q.30. (By Senator Hollingsworth) Now, have you given all of the knowledge that you have concerning that meeting? A. Concerning the meeting itself?

Q.31. Yes. A. Of course, you understand that we went from that meeting, prepared our check for $10,000.00 and delivered it that afternoon, but that is not in connection with the meeting.

Q.32. But you have given us now all of the knowledge that you have of what happened at that meeting? A. I can recall nothing else.

Q.33. But you get an impression that an extremely delicate situation existed in Missouri? A. Yes.

Q.34. In regard to this compromise. You got that impression, did you? A. Yes.

Q.35. What was delicate about it? A. I don't know.

Q.36. That he had to have $100,000.00 before he could get the settlement through? A. I think that would be not a correct statement, sir, in my impression.

Q.37. He told you he had to have $100,000.00? A. For expenses, yes, sir.

Q.38. He didn't want to take it up with the remainder of the companies? A. That is true.

Q.39. And that a delicate situation existed? A. Yes, sir.

Q.40. And he also told you that the settlement was in a precarious condition and he needed $100,000.00?

General Bullitt: He didn't say that.

The Special Master: No, he didn't say that.

General Bullitt: Now, wait a minute.

Q.41. (By Senator Hollingsworth) All right, what did he tell you?

The Special Master: I have already sustained the objection. He didn't make any such statement.

Q.42. (By Senator Hollingsworth) He told you it was delicate? A. No, sir, as I explained beforehand, those are my impressions rather than the words which he used.

Q.43. All right, what was the substance of what he said, that you were under the impression that a delicate situation existed in Missouri? A. Well, one of the principal reasons was because of the confidential nature of the meeting which was held here.

Q.44. Now, it was a confidential meeting just between a few of you? A. I presume it could be so-called.

Q.45. A matter that could not be imparted to the remainder of the companies at this time? A. That was not the impression that I had.

Q.46. Why was it confidential as to these few companies? A. I can't tell you.

Q.47. Well, didn't you have any curiosity about it? A. Well, if there had been any curiosity, it would have been probably satisfied by an explanation such as this.

Q.48. Well, was such an explanation made? A. No, sir, other than that to the ramifications and complexities of the Missouri situation to explain to all companies involved would be almost an impossible procedure toward the negotiations.

Q.49. But this is confidential. This was a confidential meeting. You meant by that that the others were not to be advised at this time about the raising of this fund? A. I think it was so implied.

Q.50. You so understood it? A. I think so, yes, sir.

Q.51. Then you knew that the $100,000.00 was to be used for a secret purpose, didn't you? A. No, sir.

Q.52. Then why not advise the other companies? A. Because it would involve explanations which would take in a town meeting.

Q.53. It would do what? A. Provide for a town meeting with all of the companies involved acquainted with the facts.

Q.54. But I understood now that you had a confidential meeting and you understood that the other companies were not to be advised or know anything about it. You understood that it was to be kept in confidence? A. In a general way, yes, sir.

Q.55. And you knew a delicate situation existed in Missouri? A. Yes, it was common knowledge.

Q.56. Sir? A. Common knowledge, I think.

Q.57. You were called upon to advance $10,000.00? A. We voluntarily advanced it.

Q.58. Yes, on the theory, I presume, that in some way you would get it back, at some future time? A. Yes, sir.

Q.59. If the settlement were not made, you didn't know when, if ever, you would get it back? A. Quite right.

Q.60. And you advanced $10,000.00 on that contingency? A. Well, sir, if I may just suggest there, that we have passed many thousands of dollars in Missouri litigation that we never knew when we would get back.

Q.61. I am talking about this $10,000.00. A. It is simply as other expenses had been paid since 1922.

Q.62. Had you paid $10,000.00 at any other time in a lump sum? A. Not in a lump sum. We have no knowledge of that.

Q.63. Had you paid anything like that in lump sums? A. We have never paid in lump sums. It has always been a question of assessment.

Q.64. What was the largest assessment you had paid prior to that time? A. I can't tell you, not specifically for this litigation.

The Special Master: They didn't pay assessments for this. They paid assessments by the Missouri rating

bureau which was financing this case, but was also carrying on the entire rating activity for all of the stock fire insurance companies belonging to their group in Missouri?

A. That is correct.

The Special Master: So that unless they would ask for an accounting it wouldn't show how much was for that, is that correct?

A. That is right, sir.

Q.65. (By Senator Hollingsworth) Now, as to the delicate situation, did he say anything about what caused or what the delicacy was of the situation? A. No, sir, not to my knowledge.

Q.66. He told you that if you raised the $100,000.00 he thought he might be able to make a settlement? A. No, sir.

Q.67. What did he say? A. It was not contingent on that, as I recall.

Q.68. It was necessary, wasn't it? A. It was necessary, as I recall. This is the impression, that it was necessary to provide contribution for expenses at this time.

Q.69. To make a settlement? A. In connection with the negotiations for the proceeding.

Q.70. What expense could you conceive of that there could be in making a settlement? A. None at the time.

Q.71. So you didn't see any reason for it in order to make a settlement, did you? A. The reason was not stated.

Q.72. And you didn't see any reason. I believe you stated you didn't see any reason for that? A. I didn't question it at all.

Q.73. But you didn't see any reason for it? A. No.

Q.74. And yet you volunteered to put up your check for $10,000.00 then and there? A. Correct.

Q.75. And when you did it, you thought it would help to bring the settlement about, didn't you? A. I don't know that that is true.

Q.76. Well, what did you contribute it for then? A. For the reason which was stated to us, that it was necessary in connection with expenses.

Q.77. In connection with expenses? A. Of the litigation.

Q.78. You said the settlement a while ago, didn't you? A. In connection with the negotiations for settlement, yes, sir.

Q.79. The negotiations for settlement. Then you knew that the $100,000.00 was to be used in connection with the negotiations for settlement, didn't you? A. Well, I presume that negotiations have continued from various quarters all the way along.

Q.80. Now, I didn't ask that.

The Special Master: Let's hear what he has to say.

A. These negotiations have been expense and expense, and this was simply one additional item which we were asked to meet in this particular way. I don't know the relation of it.

Q.81. (By Senator Hollingsworth) The expense, you knew, the past expense, was not in connection with negotiations; that was in connection with litigation, wasn't it? A. Not that I know of.

Q.82. All right. A. It never has been segregated.

Q.83. What was to be done if the negotiations were unsuccessful? A. Continue them, I presume.

Q.84. Sir? A. Continue them, I presume.

Q.85. I know, but with the $100,000.00, what was to be done with that if the negotiations were not successful? A. The assumption was that it was to be classed as all other contributions to Missouri rating organizations, assessments on all of the companies.

Q.86. I have before me a memorandum in regard to the Hartford meeting with Mr. Street.

The Special Master: Did anybody in that meeting ask him why that $100,000.00 was necessary?

A. Not that I recall.

Q.87. (By Senator Hollingsworth) Did anybody ask him to whom it was to be paid? A. To him as chairman.

Q.88. Well, I know, but to whom it was to be finally disbursed? A. No.

Q.89. The name of any Missouri person mentioned in that meeting? A. I beg pardon, sir?

Q.90. Was the name of any Missouri person mentioned in that meeting? A. Not that I recall.

Q.91. He told you there was a powerful man in Missouri, didn't he? A. Not that I recall.

Q.92. You remember some discussion along that line, don't you? A. No, sir.

Q.93. Sir? A. No, sir.

Q.94. What discussion was there about Missouri personages? A. None, that I recall.

Q.95. Did you hear the name of Pendergast? A. He may have referred to the Superintendent or some officials or the judges of the court, or I don't know.

Q.96. In connection with the $100,000.00 he referred to them? A. No.

Q.97. How did he mention them then, the judges of the court? A. They may have come up casually, that he might have referred to any official in Missouri.

Q.98. What did he say? A. Nothing, that I recall.

Q.99. He mentioned the name of Pendergast in connection with the conversation? A. Not to my knowledge.

Q.100. You heard the name there that day? A. Not to my knowledge.

Q.101. Do you say it wasn't mentioned? A. I say, I have no recollection of it at all.

Q.102. Well, what Missouri people did you hear mention of? A . None.

Q.103. You said that he did. A. I said he might have referred to one or two officials.

The Special Master: He didn't say so. He said not to his recollection; it might have happened.

Q.104. (By Senator Hollingsworth) What official do you have in mind when you said he might? A. He might have referred to the judges of the federal court. I think he might have referred to the State Superintendent. I think he might have referred to Bill Hyde. I think he might have, but I have no recollection of any official specifically, or any name being mentioned.

Q.105. When he was talking about the $100,000.00 did he mention any Missouri personage? A. In the meeting he did not, not to my knowledge or recollection.

Q.106. Outside of the meeting? A. I didn't see him outside of the meeting, sir.

Q.107. Did you talk to anyone else about this meeting afterwards? A. No, sir.

Q.108. Did you have any idea or conception what the $100,000.00 was to be used for? A. I beg pardon, sir?

Q.109. Did you have any idea what the $100,000.00 was to be used for? A. Legal expense.

Q.110. Legal expense? A. Yes, sir.

Q.111. In connection with negotiations. To whom was that legal expense to be paid? A. Beyond the fact that we paid it to the chairman of the Subscribers' Actuarial Committee, we had no knowledge.

Q.112. But Mr. Street never told you it was legal expense, did he? A. I don't remember.

Q.113. You don't remember his having told you that? A. No.

Q.114. Did he tell you anything about what the negotiations had been up to date? A. No detail.

Q.115. Did he tell you what his negotiations were to be? A. No.

Q.116. Nor where they were to be? A. No, sir.

Q.117. Nor when? A. Correct.

Q.118. Now, I have before me a memorandum which purports to cover the Hartford meeting wherein it was stated, "It is necessary in carrying on this activity to use temporarily $100,000.00 which will be accounted for when the settlement is made. We are asked to contribute our portion of this sum as shown below." Did that happen in your meeting? A. Substantially that.

Q.119. So that part happened here just the same way? A. Substantially that.

Q.120. I notice this memorandum, "Mr. Street is to turn this money over to our attorneys, Hicks and Folonie, but it is not to be delivered unless the settlement as above referred to is effected." Did that happen in this meeting also here in New York? A. I can't recall that it was a condition.

Q.121. What do you recall to that extent about it? A. That it was a temporary advance.

Q.122. A temporary advance? A. Yes.

Q.123. And it was to be turned over to Hicks and Folonie, was it? A. Well, presumably it would, but whether that was definitely stated, I don't know. We recognized Hicks and Folonie and Street as the negotiating people, and those in charge of the entire Missouri complicated situation.

Q.124. Then you understood also that it was to be turned over to Hicks and Folonie but it was not to be delivered by them unless "the settlement as above referred to was effected"?

General Bullitt: He didn't say that.

The Special Master: He said just to the contrary.

General Bullitt: You are reading out of another thing.

Q.125. (By Senator Hollingsworth) Did that happen here at this meeting? A. Not to my knowledge.

The Special Master: He testified he had no recollection it was conditional.

Q.126. (By Senator Hollingsworth) Was the name of Hicks and Folonie mentioned? A. I have no knowledge.

Q.127. Did he tell you how much was to be raised here and how much in Hartford? A. I don't recall specific amounts mentioned.

Q.128. Well, I mean approximately? A. I wouldn't be certain. It seems to me there was some discussion of how it could be raised here in New York.

Q.129. About how much was raised in New York? A. I don't know.

Q.130. You contributed $10,000.00. Didn't you have any actual knowledge as to what was to be raised? A. No.

Q.131. Well, you knew it was not all to be raised in New York? A. That, I think, was indicated because Mr. Street mentioned the fact that he was leaving for Hartford to be there the next day.

Q.132. Now, do you recall now how much the New Yorkers raised? A. No, not at all.

(Check requisition, handed to the reporter, was marked for identification as "Defendants' Exhibit 103, EFM.")

Q.133. I show you Defendants' Exhibit 103 and ask you to state if that is the check requisition that— A. (Interrupting) That is right.

Q.134. Did you prepare that? A. Mr. Warner and I gave instructions for it together.

Q.135. Was Mr. Warner at this meeting? A. Yes, sir.

Q.136. With you? A. Yes, sir.

Q.137. And is it your handwriting? A. No, it is the handwriting of our now dead cashier.

Q.138. His name? A. Finney. Finney, he is dead.

Q.139. Both you and Mr. Warner approved it? A. Right.

Q.140. "HW," I presume, is Mr. Warner? A. Yes.

Q.141. And "HC" is you? A. That is correct.

(Photostatic copy of check, handed to the reporter, was marked for identification as "Defendants' Exhibit 104, EFM.")

Q.142. I show you Defendants' Exhibit 104 and ask you to state if that is the check and the endorsements that appeared on the back. A. Yes, a photostat, that is right.

Q.143. I notice that is endorsed, "Pay to the order of R. J. Folonie, C. R. Street, Chairman." A. Yes.

Q.144. And under that the endorsement, "R. J. Folonie, Attorney." A. Right.

Q.145. And then you notice under that, "For Deposit Hicks and Folonie, per R. J. Folonie." A. Correct.

Senator Hollingsworth: We offer that check in evidence, and also Exhibit 103.

General Bullitt: That is the $10,000.00 check?

Senator Hollingsworth: That is the $10,000.00 check.

(Which said Defendants' Exhibits 103 and 104, so offered in evidence, having been previously duly marked, are in words and figures, as follows:)

25363

Royal Insurance Company Limited

150 William Street, New York, N. Y.

MAY 2 1935 19

To Cashier:

Please draw check for $ 10,000 00 in settlement of

to the order of

C. R. Street
Chairman

Advance Fee
Missouri litigation

EXAMINED
C. L. NOVAK
AUDIT DEPT.

PAID
—BY CHECK DATED—
MAY 2 - 1935
MANAGER

Charge to:

Legal Expenses $ 10,000 00

$

$

$

Checked By

Payment Approved By
Department Head

Executive Approval (if required)

Check Signed By
Executive

ROYAL INSURANCE COMPANY, LIMITED

...BANK OF THE MANHATTAN COMPANY...

PAY TEN THOUSAND AND 00/100 ********** DOLLARS $10,000.00

IN FULL PAYMENT OF ADVANCE RE. MISSOURI LITIGATION

TO THE ORDER OF

*** C. R. STREET, CHAIRMAN ***

ROYAL INSURANCE COMPANY, LIMITED
WORKING ACCOUNT

THREE SIGNATURES NECESSARY IF AMOUNT IS IN EXCESS OF $1000

28

PAID THROUGH CLEARING HOUSE

MAY 10 1935

NEW YORK

THE MANHATTAN TRUST COMPANY

HICKS & TOUCHE

DISCHARGE OF THE SUM HEREBY PAID ALL CLAIMS AND DEMANDS WHATSOEVER AGAINST ROYAL INSURANCE COMPANY, LIMITED SUBJECTED WITH THE WITHIN MENTIONED SUBJECT/ARE RELEASED UNDER AND DISCHARGED.

Q.146. I notice this is made, "Advance *Re* Missouri Litigation." At the time you wrote that, you didn't intend for that check to be a payment of legal fees, did you? A. Yes, sir.

Q.147. Why didn't you write it "legal fees"?

Mr. Bullitt: You mean on the face of the check why didn't he do it?

Senator Hollingsworth: Yes, sir.

Mr. Bullitt: It is on the voucher that way.

Q.148. (By Senator Hollingsworth) I mean on the check, "Advance *Re* Missouri Litigation"; if you understood it was attorneys' fees, why didn't you write it "Attorneys' fees"?

The Special Master: Did you write the check?

A. No, sir, that is in our cashier's department. I signed it.

Mr. Bullitt: But Mr. Master, the vouchers that he has just identified, that the witness says he did sign, says it is for legal expenses, and—

The Special Master: Let's see the voucher.

A. Here it is (indicating).

The Special Master: Did you write out the voucher?

A. No, sir.

The Special Master: Who did write the voucher?

A. The late Finney, cashier.

The Special Master: It says, "Advance Account Missouri Litigation." That is what the voucher—

A. (Interrupting) And charged to—

The Special Master: And says, "Charged to legal expenses," and then the check.

General Bullitt: It is to C. R. Street, Chairman.

The Special Master: It is the same way, except it does not tell what account to charge it with, whereas the voucher does.

A. That is our bookkeeping ledger, yes, sir.

Q.149. (By Senator Hollingsworth) And you charged it to legal expense because you understood now, as I understand you to say, that it was legal expense? A. Yes, sir.

Q.150. All right. Then the settlement went through? A. Yes.

Q.151. You recall that? A. Yes.

Q.152. You were familiar with the terms of the settlement? A. I think the first knowledge that we had of record was of February 4, 1936, from the Subscribers' Actuarial Committee.

General Bullitt: A little louder.

A. A letter from the Subscribers' Actuarial Committee of February 4th, a circular letter to the companies it says, doesn't it?

The Special Master: I have been waiting to see what this is. This is to companies. This is a circular letter and it comes from the Subscribers' Actuarial Committee? A. That is correct.

The Special Master: That is the notice that the companies got of the disposition of the Missouri rate litigation?

A. I think that is the first notice that we had.

The Special Master: All right, let's see what it says. Mr. Cartlidge, did you read this circular letter when it came in?

A. I did, and I don't think I have read it since, the last paragraph.

The Special Master: But you did read it when it first came in?

A. Yes, sir.

The Special Master: Item 10 of that says, "The money coming into the hands of C. R. Street and R. J. Folonie, trustees, will be employed to discharge any debts incurred by or under the direction of this committee; agreed amounts payable to the Superintendent of Insurance and for his counsel; court costs; Custodian's fees; attorneys' fees and expenses of counsel for the companies; costs of administering and safeguarding money in the hands of the trustees; contingent allowances or charges; any remaining balance subject to distribution to the companies will not, in the nature of the matter, be finally and completely distributable for some time to come." You read that?

A. Yes, sir.

The Special Master: That was your knowledge of what the 30 per cent was held up for?

A. Yes.

The Special Master: Has that been introduced?

Senator Hollingsworth: No.

(Said letter, handed to the reporter, was marked for identification as "Defendants' Exhibit 105, EFM.")

Senator Hollingsworth: Now, the letter to which you have referred, dated February 4, 1936, from Subscribers' Actuarial Committee, addressed to the companies has been marked "Defendants' Exhibit 105," and I now offer it in evidence.

(Which said Defendants' Exhibit 105, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 105.

Subscribers Actuarial Committee
222 West Adams Street
(P. O. Box 1089)
Chicago, Ill.

February 4, 1936.

To Companies:

In re: Missouri Rate Case
- Federal Court -

A final decree was entered by the statutory three-judge court at Kansas City on February 1, 1936, disposing of this case. It may be summarized as follows:

(1) The disposition of the case, as stipulated by the parties, is confirmed.

(2) No policyholders having intervened, distribution is made according to the terms of settlement.

(3) On all policies effective from June 1, 1930, to April 30, 1935, the title to the impounded fund is confirmed, 20 per cent to policyholders and 80 per cent to companies, of which 50 per cent is to be sent to them directly, and 30 per cent to C. R. Street and R. J. Folonie, trustees.

(4) On all policies effective May 1, 1935, to November 10, 1935, policyholders receive one-third, and the companies (see point 6) two-thirds, to be transmitted 50 per cent directly to the companies, and 16-2/3 per cent to C. R. Street and R. J. Folonie, trustees. (This means putting the new rates back to May 1st as originally agreed.)

(5) Profits on securities and interest acquired during retention of the fund have their pro rata proportion assigned to policyholders the same as principal. The remainder is placed to the credit of the companies, but will be resorted to for Custodians' cost of refunding, which will consume the major portion of it.

(6) The Court is also, for the present, retaining the companies' share of the impounded money upon policies respecting which impoundings were made subsequent to July 15, 1935 (Policies effective from May 1, 1935, forward), so that for all fees, costs and expenses of court officers and refunding operations there may be a fund against which resort may be had.

(7) The distribution to be made in the immediate future to cover pro rata of money impounded upon policies effective prior to April 30, 1935, (see point 4) is merely a payment on account, and all adjustments arising out of errors, omissions, cancellations not yet posted, and similar items, will be adjusted against the remnant remaining in the hands of the Custodian. (See circular of February 3.)

(8) The distribution of the fund to policyholders will be undertaken by W. T. Kemper, Custodian, under this decree. It was originally contemplated that the Superintendent of Insurance should make the distribution but he has expressed his willingness that the Custodian perform this service.

(9) It is anticipated that no remittances to policyholders can be made until June, 1936, or perhaps even later, because the books cannot be completely posted and verified and balanced before that time. The distribution to policyholders thereafter will require considerable time; there will be approximately three and one-half million checks, which will include prorata of interest to each policyholder, requiring much tedious calculation and checking. About half of the checks will be fifty cents or less in amount.

(10) The money coming into the hands of C. R. Street and R. J. Folonie, trustees, will be employed to discharge any debts incurred by or under the direction of this committee; agreed amounts payable to the Superintendent of Insurance and for his counsel; court costs; Custodian's fees; attorneys' fees and expenses of counsel for the companies; costs of administering and safeguarding money in the hands of the trustees; contingent allowances or charges; any remaining balance subject to distribution to the companies will not, in the nature of the matter, be finally and completely distributable for some time to come.

Subscribers Actuarial Committee

State Court cases still to be decided."

Q.153. (By Senator Hollingsworth) Did you afterwards receive a dividend from this 30 per cent fund of 11 per cent? A. Yes, sir, we did.

Q.154. What records do you have there before you that show that? A. I think you have copies of all of them. It shows. Here is a photostat of a typewritten

slip which undoubtedly you have, which shows the checks payable to the several companies. That is a copy of this.

Senator Hollingsworth: I will have this marked.

(Said photostatic copy of memorandum, handed to the reporter was marked for identification as "Defendants' Exhibit 106, EFM.")

Q.155. Now, Defendants' Exhibit 106 is the memorandum to which you have referred? A. Yes, sir.

Q.156. And that has a notation on it, "11 per cent of the impoundings to May 1"? A. That is right.

Q.157. What is this (indicating)? A. "Cash impoundings to May 1, 1935, 5 per cent."

Q.158. I notice "C. R. S. per P. L. Haid." A. That is the assistant chief accountant of our office.

Q.159. That indicated that payment of what was made to C. R. S. ? A. I beg pardon, sir.

Q.160. That indicates payment to C. R. S. per P. L. Haid? A. Yes.

Q.161. What payment was made to C. R. Street per Paul L. Haid? A. This, less the refunding of the $10,000.00 to which you referred sometime back.

Q.162. Well, up here I notice "Cash Received per H and F." What does that mean? A. Well, that is problematical. Now, whether these checks were from Hicks and Folonie or from Street or from whom they came, or I mean who may have signed, on what account they are drawn, I can't tell you. That is probably our assistant chief accountant's note. I guess it was Hicks and Folonie.

Q.163. Now, a memorandum here says "5 per cent, $22,200.40." That is 5 per cent of the impounded premium? A. No, that is 11 per cent.

Q.164. Oh, yes that is 11 per cent? A. My answer is incorrect.

Q.165. Now, the $22,200.40 is 5 per cent? A. That is correct.

Q.166. Of the impounded premiums? A. That is correct.

Q.167. Now, you received a check for 11 per cent? A. Which was $48,840.90, that is correct.

Q.168. Now, that is correct? A. I made a mistake.

Senator Hollingsworth: I offer in evidence Defendants' Exhibit 106.

(Which said Defendants' Exhibit 106, so offered in evidence, having been previously duly marked is in words and figures as follows:)

Cash received per H. & F.

Royal Ins. Co., Ltd.		10,779.72 x		97,997.48 ^			
Federal Union		1,416.39 x		12,876.29 ^ F.U.	Cash compounding		
L. & L. & G.	11% of	19,023.87 x		172,944.26 ^ L.	by May 1. 1935.		
Newark Fire	Imp. May 1	3,137.38 x		28,521.63 ^			
Queen		11.323.14 ^		102,937.62 ^		5%	
Star		3,160.40 x	48,840.90	28,730.90 ^	444,008.18	22,200.40	

Payment to C.R.S. per P.L.H.

D 106

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(A memorandum, handed to the reporter, was marked for identification as "Defendants' Exhibit 107, EFM.")

Q.169. Now, I hand you Defendants' Exhibit 107, which is a written memorandum. Who signed that? Who wrote that? A. It looks to be Mr. Haid's writing.

Q.170. Well, you recognize that as the handwriting of Paul L. Haid? A. I think I do, yes, sir.

Q.171. At the time you received your check for 11 per cent, did you receive this memorandum, Defendants' Exhibit 107? A. I am sure that we did. It bears no date stamp, but I am sure that we did.

Q.172. How did that come through to you, by messenger? A. By messenger.

Q.173. At the time you received your 11 per cent check you received this memorandum, Defendants' Exhibit 107, from Mr. Haid? A. Yes, I think that is right.

Q.174. Was that all of the information that you had at the time you received the 11 per cent? Is that all of the information that you had? Did you get any further information? A. I think there was a telephone call from someone in this office that went direct to Mr. Warner and he came to my home. Of course, I can't repeat the words, but he said they said "We are sending you a memorandum over with checks and here is what I want."

Q.175. Did you and Mr. Warner confer about the matter? A. Yes.

Q.176. What conference did you and Mr. Warner have? A. Of course, other than this possible single telephone conversation, we were together at the only times when the subject was discussed, so it was only in connection with this telephone conversation, you might say.

Q.177. Well, you received information, did you not, from Paul L. Haid that you were to remit back to C. R. Street a 5 per cent check? A. Yes.

Q.178. And this memorandum came with your 11 per cent check? A. I am sure it did.

Q.179. And it says, "Dear Mr. Warner: Amount desired, $22,200.40 Previous payment, $10,000.00, balance, $12,200.40. Check to C. R. Street, Agent, to be sent here as soon as possible. P. L. H." Did you receive any further information from Mr. Haid at that time other than what is set forth in this memorandum? A. I think there was a telephone conversation prior to that

with Mr. Warner saying, "I am sending over a memorandum which you will understand."

Q.180. "Which you will understand," and that is all of the information you had? A. Yes, sir.

Q.181. And you issued a check to C. R. Street, Agent? A. That is right.

Q.182. At that time? A. Yes.

Q.183. For $12,200.40? A. Yes, I say at that time. These things are not here, but undoubtedly that is true.

Q.184. It says here, "To be sent as soon as possible." A. That must be true.

Q.185. You remitted that out on the same day that you received your check? A. There is no question that we did.

Senator Hollingsworth: I offer in evidence Defendants' Exhibit 107.

(Which said Defendants' Exhibit 107, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Jas. M. Warren

Amount desired - 22200.40

Previous payment 10000.00

Balance 12200.40

Check to C. P. Short agent.

to be sent here

from as preceded P. L. W.

Q 107

Q.186. At the time you issued that check to C. R. Street, Agent, you had no information as to what it was for, did you? A. No, that is correct.

Q.187. You didn't know? A. Correct.

Q.188. And, so far as you know, Mr. Warner didn't know? A. Correct.

Q.189. And simply and solely on the memorandum of Mr. Paul L. Haid, which I have here read in evidence, you sent C. R. Street, Agent, $12,200.40? A. Correct.

Mr. Bullitt: Don't you think you ought to call to the attention of the witness the memorandum here that is signed by Mr. Warner, which is quite contradictory to what you have just stated?

Senator Hollingsworth: I will get to that.

Mr. Bullitt: Well, all right. I think when you ask him that, show it to him and ask him the question and see if he gives that answer. You ought to refresh his mind and memory.

Q.190. (By Senator Hollingsworth) Whose agent was C. R. Street when you wrote that check? What did you make him your agent for? A. Well, the ramifications of the Missouri situation are so great that very little attention was paid to the question of the chairman and the agent.

Q.191. Whose agent did you understand he was? A. I had no thought on the matter whatever.

Q.192. You made a check or caused a check to be made to C. R. Street, Agent, and you had no idea whose agent he was acting as? A. I never raised the question in our minds or elsewhere.

Q.193. I, say, you had no information or idea? A. That is true.

Q.194. Did you have any belief as to whose agent he was? A. Well, in using the term "agent" we had belief that he was representing?

Q.195. (Interrupting) Who? A. The companies, the Subscribers' Actuarial Committee.

Q.196. You named him as agent for the purpose of disbursing $12,200.40 to whom? A. I don't know.

Q.197. You didn't know? Did you know for what purpose? A. No.

Q.198. You didn't know whether it was legal expense or what, did you? A. We didn't know.

Q.199. You didn't know; and you had no information? A. No.

Q.200. Yet when you went to make a requisition for bookkeeping purposes, you did call it legal expense, didn't you? A. Temporarily.

Q.201. Temporarily. Why did you do it temporarily when you didn't know? A. How is that? Why did we do it temporarily.

Q.202. Why did you make a temporary— A. (Interrupting) That is the wrong word. Say "originally."

Q.203. All right, originally. Why did you make it originally legal expense when you didn't know what it was? A. Assumption.

Q.204. On an assumption of what? A. That Street was engaged in legal activities.

Q.205. Well, I know, but the case had been settled. You had information back there in 1936 that your legal fees had been taken care of. Now, what made you assume that you had to pay 5 per cent more? A. I don't think that that was the case.

Q.206. Why?

The Special Master: What was the case?

A. I think the case is that a large sum of funds, obviously, was still in the hands of the trustees for disbursement, as we understood, for these various expenses that have been mentioned there, and that here was 11 per cent disbursed to the companies, 5 per cent to go back and obviously the assumption was that it was simply handling of funds in the interest of the trustees, although if it was, of course, made to an individual, he was chairman of the Subscribers' Committee who had been in those things for this long period of time, and it seemed there was nothing about the whole thing to occasion any inquiry or anything of the sort.

Q.207. But you didn't know it was legal fees? A. No.

Q.208. You had no information that it was legal fees. You just told me that, didn't you? A. Nothing in writing to that effect.

Q.209. Well, verbally either? A. Nothing verbally.

Q.210. So you didn't have any information at all it was attorneys' fees. You did know that 30 per cent had been allocated out of these $9,000,000.00 of funds for the purpose of payment of attorneys' fees? A. Correct.

Q.211. Wasn't a fair and honest assumption that it was not attorneys' fees? A. I suppose that might be an assumption, but it never occurred to us.

Q.212. Yes, all right. As a matter of fact, you knew in your own mind that it was not attorneys' fees? A. That is false.

Q.213. All right.

The Special Master: Did you ever try to find out what it was for?

A. No. In fact—I suppose we will get to that later, though. Am I being cross examined here?

The Special Master: What is that?

A. I thought it was conversation.

The Special Master: No, I asked you a question. It all goes in the record.

A. I beg your pardon, sir, if you will ask it again.

The Special Master: I think you answered it. I asked you, did you ever try to find it out, and you said "No."

A. I said, "No," that is right.

The Special Master: However, I don't want to discourage you if you have more to say than that.

A. No.

The Special Master: If you have any more to say—

A. (Interrupting) No, that is the answer.

(Requisition for check, handed to the reporter, was marked for identification as "Defendants' Exhibit 108, EFM.")

Q.214. (By Senator Hollingsworth) I show you Defendants' Exhibit 108, which I offer in evidence, which appears to be a requisition for this check. Do you so recognize it? A. Yes, sir.

(Which said Defendants' Exhibit 108, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

PAID _____ BY CHECK NO. 36807

ROYAL INSURANCE COMPANY, LTD.

NEW YORK

March 21st 1936

TO CASHIER:

PLEASE DRAW CHECK TO ORDER OF:

C. R. Street, Agent.

FOR $ 12.200.40 Ins

SETTLEMENT OF THE FOLLOWING ITEMS:

Expenses re Missouri Rate Litigation

EXAMINED
APR 3 1936
L. P. TELLER

CHARGE TO:

Missouri Legal Expenses $ 12.200.40

$ _____

$ _____

$ _____

CHECKED BY: _____

PAYMENT APPROVED BY: _____

DEPT. HEAD _____

PAYMENT AUTHORIZED BY:

EXECUTIVE _____

FORM 65060 RIN 6-01

D.108

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Q.215. I notice on here, "Settlement of the following items:" You have ordered a check for $12,200.40 "Expenses re Insurance Rate Litigation." A. Yes.

Q.216. That was done after collaboration between you and Mr. Warner? A. Yes.

Q.217. Now, down here I see "Legal expenses, $12,200.40," and I see that "legal expenses" has been stricken out. A. That is right.

Q.218. Why did you strike it out? A. Because we —may I answer in reference to the check for $10,000.00 too? If you haven't brought that out, I think that that was later journalized from legal expenses to suspense, with this memorandum here which you may not have a copy of. I don't know.

The Special Master: You haven't offered that in evidence.

Senator Hollingsworth: I think I did in both of them.

Mr. Bullitt: Don't you think, Mr. Master, as I understand it, the only proper thing is when he goes to reading out of a thing is to offer it in?

The Special Master: That is what I am trying to have done. Have you ever introduced that in evidence?

Judge Henson: Yes, it is introduced.

The Special Master: It is already in?

Judge Henson: He included the introduction of it.

The Special Master: I do not want to try to follow these questions from exhibits that are not introduced.

Mr. Bullitt: Can't we have this understanding that when they start to read from exhibits, they must be offered in evidence?

The Special Master: They say they have introduced this one. I just didn't remember it. This is Exhibit 108.

A. Well, the point is, Mr. Master, I might be telling you something you want to bring out some other way. Both of those disbursements were originally charged to legal expenses and subsequently each transferred to suspense, this by erasure of that kind, the $10,000.00 by journal entry at a later date.

The Special Master: Because it was done substantially subsequent to the transaction?

A. Yes, this having gone through at the time.

The Special Master: The other you changed before it went through?

A. No, sir, subsequently to the time it went through.

The Special Master: Where you changed it from legal expense—

A. (Interrupting) To suspense, yes, sir, at a subsequent date.

The Special Master: What happened to cause you to change it from legal expense to suspense?

A. Because of our understanding that both of those disbursements would be eventually reimbursed to us.

The Special Master: I know, but something came up. Things don't get changed on books unless something comes up. Something happened. The head auditor asked you a question or you heard something and went and told him, or something happened that made you go and change it. Do you remember how it came up?

A. No. I can't say that it came up, other than just a question of discussion between Mr. Warner and our chief accountant and myself, and we had understood right along that reimbursement was going to be made.

The Special Master: That hadn't been clear to the auditor up to that time?

A. Yes, it was purely a technical and inconsequential matter.

The Special Master: I am trying to find out what happened.

A. Nothing that specifically prompted it, except our understanding.

The Special Master: All right.

Q.219. (By Senator Hollingsworth) After you issued the check did you receive any information that it was for legal expenses? A. No specific information.

Q.220. Well, did you receive any general information? A. Impression only.

Q.221. Impression only. What happened that gave you that impression?

General Bullitt: You say after the check, not what happened before?

The Special Master: Yes.

A. Well, at the time of the issuance of the check, is that what you mean?

Q.222. (By Senator Hollingsworth) No, I asked you afterwards. A. Well, nothing transpired afterwards.

Q.223. You testified to your impression at the time you issued it? A. Yes, sir; nothing transpired afterwards.

Q.224. I asked you what transpired afterwards. A. Nothing, that I can recall.

Q.225. So you have no information since you issued the check as to what it was for? A. No.

Q.226. You have since learned, have you not, that a large amount of money was used by C. R. Street for the purpose of corruption of Missouri personages?

The Special Master: You know of the report?

A. I know of the report, yes, sir.

Q.227. (By Senator Hollingsworth) Has it occurred to you that this money might have been used for that purpose? A. It has now.

Q.228. Have you made any investigation to learn whether it has? A. No.

Q.229. Why haven't you? A. Apparently the investigation is well under way.

The Special Master: Don't you think, Mr. Hollingsworth, that at this time it won't do the insurance companies very much good to try to take charge of the investigation?

Senator Hollingsworth: No, your Honor, I am asking that on this theory: That it throws some light on the fact of the insurance companies' knowledge.

The Special Master: Well, if he got that before the thing came out in a legal investigation, I would agree with you, but if he got that through a newspaper report and the newspaper report was incident to legal investigations that were already under way before the newspapers or anybody else knew anything about it, I can't see the connection; honestly, I can't. If the first information he got was through the newspapers and that was that there was an indictment charging this, and since then there has been a motion made to have the district attorney investigate and see if anybody is guilty of contempt and to have a Master investigate and see who is responsible and all these things happened, the fact that the insurance companies kind of sit back on their haunches and let nature take its course when that is all they can do, I don't believe it throws any light upon their knowledge.

General Bullitt: And, furthermore, as soon as it came out in the newspapers—I am sure I am right about this—as soon as it came out in the newspapers there was some talk about Pendergast and this money, the insurance companies went to the district attorney.

The Special Master: I think it could have gotten out of their hands from then on. I can't honestly see

what an insurance executive could do about it after the thing broke.

General Bullitt: The night of the 10th of March they turned the whole thing over. The district attorney was notified that the insurance companies were going to give them everything in the world.

The Special Master: I am just mentioning that because unless you have some information that they heard about this before it broke in the newspapers, I don't think their inactivity from then on is important.

Senator Hollingsworth: I don't think the Master understands my position.

The Special Master: That is what I am trying to tell you, because if I don't you ought to get me clear.

Senator Hollingsworth: Well, my position is this: That the natural reaction of any insurance executive if, having no knowledge or information about any corrupt use of money prior to the time it broke in the newspapers, would be to immediately begin a search of his files and records and all sources of information for the purpose of trying to ascertain whether or not any of his money had been used for that purpose; whereas, on the other hand, if he did have reason to believe at the time he heard the story that it was true, he wouldn't make any investigation.

The Special Master: I agree with that perfectly unless right at the time it broke and became public there were investigating agents more powerful than his whole company or all of the companies combined, which was the fact in this case. In this case the investigations were being carried on by a federal grand jury and by a three-judge federal court, which had a greater inquisitorial power than all of the 137 companies combined.

Senator Hollingsworth: Yes, but he had avenues which were not readily available to those agents.

The Special Master: If it turns out that is not true and they have blocked up the avenues, I think that is of tremendous importance, but there is no such evidence.

General Bullitt: Before a single witness testified they communicated with the district attorney.

Judge Henson: Before any witness testified?

General Bullitt: I don't say "any." I am not familiar, but before any of the insurance people, before any insurance man had testified before the grand jury they notified him. It may have been secret things that he didn't know.

Judge Henson: We challenge that part of the statement.

General Bullitt: What happened was as soon as the district attorney had issued a subpoena for some presidents to come, before any of them responded they notified the district attorney they would give him everything in the world they had, and instead of ten days, they had given it to the district attorney, within a week or ten days from the time he offered, just instantly got it. It took a little while to assemble it from 137 companies, but they got it to him all right.

A. Those are concrete statements that you make. But the saddest thing that has happened to us in the current review is the fact that we did not re-impound those funds in their entirety before we got a court order to do it, and I believe we were requested not to do it.

General Bullitt: Of course, I couldn't—there are some things—

A. (Interrupting) But there is one thing, we wanted to pay the money back to the court.

General Bullitt: There are some things I can't go into here because the Government is involved. I will tell it off of the record, but I don't want it to go in here.

Q.230. (By Senator Hollingsworth) I would like to ask you one more question. Did you report either of these disbursements to your board of directors? A. No, sir, being foreign companies, two of the other companies involved, we have no directors in this country. Domestic companies do have directors but that, I am sure, was never brought before them.

Q.231. Did you report it to the home officials of your company? A. These two disbursements?

Q.232. Yes. A. No, sir, except as it appeared in the accounts.

Q.233. There was no correspondence of any kind? A. No, sir.

Senator Hollingsworth: That is all.

Cross Examination by General Bullitt.

XQ.234. I will get at two questions. At the May 2, 1935, meeting at which you were present with Mr. Street, what did he say, if anything, about making an accounting of this advance and whether it would be reimbursed later to you? A. We understood that it would be reimbursed to us.

XQ.235. Did he say anything about making an accounting to you of the purpose for which it was devoted? A. I think not. I have no recollection of it.

XQ.236. If a settlement were made of this Missouri litigation between the companies and the other people in the case, it would have to be made with the Superintendent of Insurance, wouldn't it? A. I don't know, sir.

XQ.237. Don't you know that the Superintendent of Insurance was the other party to the suit, the defendant? A. I would have assumed that it had to be made with the approval of the court, but I don't know.

The Special Master: He wouldn't know. Maybe in Missouri the Attorney General would have a right to say whether he would settle.

XQ.238. (By General Bullitt) What I mean to say, you couldn't settle the suit without the defendant, who is the Superintendent of Insurance, being there.

The Special Master: Well, you might know it, but he wouldn't necessarily know.

XQ.239. (By General Bullitt) When your $10,000.00 check dated May 2, 1935, came back to your company, didn't it show that the $10,000.00 advanced to C. R. Street, Chairman, went into the back account of Hicks and Folonie? A. It must have shown it.

XQ.240. Look at it and see if it didn't. A. I have. I recognize the endorsement, yes, sir.

XQ.241. Hicks and Folonie were the attorneys? A. Yes, sir.

XQ.242. So your $10,000.00 went to Hicks and Folonie? A. Correct.

XQ.243. And you charged it as legal expenses? A. Yes, sir.

XQ.244. And when you advanced the other twelve thousand odd dollars, it also was originally charged to legal expense? A. Correct.

XQ.245. Now, isn't it a fact that from a bookkeeping standpoint, having once charged it to legal expenses, that by the end of the year when you closed your books, it will either have to stand always to legal expenses or ought to be charged to suspense account, if you are going to carry it over for ultimate explanation; is that correct? A. I think that regardless of the time the transfer might be made; I don't know why not.

XQ.246. Now, you had $442,000.00 impounded funds, didn't you? A. I wouldn't be certain, but approximately

XQ.247. Look at this and see if this doesn't refresh your recollection. A. That is approximately correct.

The Special Master: If it is—

XQ.248. (By General Bullitt) Well, it is, and you got back $222,000.00 on the 50 per cent, a dividend, and you got $48,000.00 more, making a total of $272,000.00 that you got back out of the impounded funds? A. That would be 50 and the 11, wouldn't it?

XQ.249. 50 and 22—it is 22 plus 48. A. Dollars, you are talking about?

XQ.250. Yes.

The Special Master: He is not talking about percentage.

A. Yes.

XQ.251. (By General Bullitt) And the expenses that you were paying out at the request of Mr. Street were $22,200.00, which is somewhat less than 10 per cent of what you were getting back? A. Yes, that is right, 5 per cent of the total, or 10 per cent of the 50 per cent.

XQ.252. So the amount you were advancing to Street which you were hoping to get back and have an accounting was, after all, less than 10 per cent of what you were getting back in cash? A. Correct.

General Bullitt: That is all I want to ask him.

Re-Direct Examination by Senator Hollingsworth.

RDQ.253. Your charge to legal expense was made before you saw the Hicks and Folonie endorsement, wasn't it? A. You are speaking of the $10,000.00 check now?

RDQ.254. I mean the $10,000.00 and the other one also. A. Oh, yes.

RDQ.255. You didn't know anything about it then, whether it was legal expense or not? A. That is true.

RDQ.256. You had no information, so the Hicks and Folonie endorsement had nothing to do with the entry on your book, did it? A. It was made prior to the receipt on the check from the bank.

Senator Hollingsworth: That is all.

(Witness excused.)

The Special Master: We will adjourn until two o'clock.

Whereupon, the further taking of testimony in said case adjourned until two o'clock p. m. of said Tuesday, August 1, 1939.

AFTERNOON SESSION, TUESDAY, AUGUST 1, 1939.

Pursuant to adjournment as aforesaid, at two o'clock p. m. of said Tuesday, August 1, 1939, came again the same parties, present and presiding as before, and the taking of testimony continued as follows:

F. W. KOECKERT, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Senator Hollingsworth.

Q.1. Mr. Koeckert, you reside in New York? A. Yes, sir.

Q.2. What is your connection with the Commercial Union Assurance Company, Ltd., group? A. I am United States manager of the Commercial Union Assurance Company, Ltd., of London, England. I hold the same position or title for the Palatine Insurance Company, for the Union Assurance Company. I am president of the Commercial Union Fire Insurance Company.

The Special Master: That is an American affiliate, is it?

A. That is a New York, American affiliated company. I am president of the American Central Insurance Company of St. Louis, Missouri. I am manager of the California Insurance Company of San Francisco, California. I am also the United States manager of the British General Insurance Company.

Q.3. But that is involved in the Missouri rate litigation? A. That is correct.

Q.4. And was your connection with these companies the same during the years of 1935 and 1936? A. Yes.

Q.5. Do you recall in May of 1935 there was a meeting of a number of the executive heads of insurance companies involved in this litigation for the purpose of having a discussion with Mr. Street in regard to a negotiation of settlement? A. I do.

Q.6. Did you attend that meeting? A. I did.

Q.7. How were you notified? A. My recollection is that Mr. Haid—that I got a notice from Mr. Haid. I had no written advices from anybody of the meeting.

The Special Master: That is, the president of the Executives' Association?

A. Mr. Haid is the president of the Executives' Association.

Q.8. The meeting was held, as I understand, in these rooms? A. In this room.

Q.9. Do you recall who attended the meeting besides Mr. Street and Mr. Haid? A. I don't know that I do, except to recall that the room was rather crowded with executives who held similar positions that I did.

Q.10. If I name some of the men will that recall it to your mind? A. I will be very happy—

Q.11. Mr. Koop? A. Yes, my recollection is he was here.

Q.12. Mr. Kurth? A. Yes.

Q.13. Mr. Cartlidge? A. I would not recall. I don't know about him.

Q.14. Mr. Warner? A. I wouldn't be able to tell you.

Q.15. Mr. Culver? A. Yes.

Q.16. I understand he is now in Europe? A. So I have been told.

Q.17. Mr. Parsons? A. I would not recall.

Q.18. Mr. Barbour? A. What is the name?

Q.19. Mr. Barbour? A. I would not recall, sir.

Q.20. Do you recall any other names? A. No, I do not.

Q.21. How long did that meeting last? A. I should say it lasted all of an hour, if not an hour and a half.

Q.22. And did the meeting ensue the same day that you got your telephone call? A. That I cannot tell you. I am rather inclined to think it was the day before or several days before that I got word that if I could, I should attend this meeting.

Q.23. Did you make any memorandum as to what happened at that meeting? A. Not a word.

Q.24. Just tell me what information you received and from whom you received it, etc. A. Well, to the best of my recollection, Mr. Street did all of the talking. He suggested that perhaps the time would come when some sort of a settlement could be made of the rate case. I do not recall that he suggested any terms or any amounts or any plan, but I do recall that as far as I was concerned, I would have been very happy for any settlement of the rate case. I was being pestered with telegrams from agents and people who were interested in having the thing settled, after so many years of apparently troublesome times. That is my impression of my own feeling as to what Mr. Street was suggesting, that if

a settlement could be made we, who were there, would be willing to let it be done.

Q.25. What else did Mr. Street say? A. Well, I think he had something to suggest in the way of certain funds that needed to be set up in order to provide for preliminary legal expenses that he thought he had to get settled before could—

Q.26. What—

Mr. Murphy: Finish your answer.

A. That he felt he needed that money, that he didn't want to go to the whole of all of the companies, but have a special group of men subscribe to a sum of money that could permit him to pay these preliminary legal expenses.

Q.27. What else did he say? A. Well, I think that was probably the substance of what he said. I do not recall that any action was taken at this meeting endorsink in any way what he said. It may have been done, but if it was, I have no recollection of it. But I know that I, for one, left the meeting quite willing to subscribe to a fund that would allow him to do this thing that he said he wanted to get rid of first, certain expenses, legal expenses.

Q.28. Have you told us, as far as you can, everything that transpired? A. Yes, as far as my recollection goes.

Q.29. You have undertaken to refresh your recollection about the matter? A. Well, I have tried to think about what really did happen, what really was said.

Q.30. Do you think now that you have told us about everything that you recall? A. Yes.

Q.31. Well, this was, as I understand, a confidential meeting? A. I didn't so understand it. I understood that everybody that had an interest in the matter was probably invited. Whether they were or not I do not know.

Q.32. I understood you to say a moment ago that Mr. Street said that he did not want to call on all of these companies. A. What I undertook to say was that he did not want to call on all of the companies for the funds that he wanted to raise.

Q.33. Did he say anything about calling in just a few of you to talk the matter over? A. I don't recall that he said that.

Q.34. Well, he did say that a delicate situation existed, or words to that effect? A. No, I don't think—he certainly didn't convey that to me.

Q.35. What negotiations did he tell you he had had up to that time? A. I don't recall that he told me any that he had.

Q.36. Well, did he say that he had had negotiations? A. I got the idea that he had certain things in prospect, certain things he wanted to develop if it was agreeable.

Q.37. Did you understand that he had talked with anyone? A. I did not so understand.

Q.38. So as far as you knew, he had done nothing toward the compromise? A. That is correct.

Q.39. You had no information that he had ever talked with anyone? A. That is my impression.

Q.40. And all of the compromise and all of the negotiations were in the future, that is right? A. That is right.

Q.41. Did he tell you anything about the nature of the compromise that he had in mind? A. I have a recollection that he said something about being able to return to the companies 90 per cent and 10 per cent to the policyholders. Now, that is as far as I recall him having said anything.

Q.42. And I believe I understood you to say that so far as you knew or were advised, he had not talked to anyone about a compromise? A. That is right.

Q.43. And he told you that he needed some money? A. That is right.

Q.44. How much money did he say he needed? A. My recollection is that he said he needed $100,000.00.

Q.45. And it was to be used for legal fees in connection with the compromise? A. Yes, sir.

Q.46. Did you ask him why he would need legal fees to make a compromise? A. I did not.

Q.47. What legal fees did you have in mind he would have in trying to make a compromise? A. Well, there was such an army of lawyers employed at all times that I wouldn't have been surprised if he had two or three more.

Q.48. Did he tell you that any lawyers had anything to do with the compromise? A. Well, at times he had let that drop at some of the committee meetings that he attended.

Q.49. Sir? A. At some of the committee meetings he let fall—may I have your question again?

Q.50. Did he say anything about what lawyers' services he would require in connection with the compromise? A. No. If he did, I don't recollect it.

Q.51. And you never asked him? A. No.

Q.52. But he needed these lawyers' fees in connection with the compromise? A. Well, not necessarily fees, legal expenses.

Q.53. Legal expenses in connection with the compromise? A. That is right

Q.54. But didn't tell you the terms of the compromise? A. No, sir.

Q.55. He didn't tell you a single expenditure that would be made in connection with the compromise? A. No.

Q.56. He wanted the money right away, did he? A. He wanted it, said something about "soon." He didn't stipulate any time.

Q.57. That is the reason he had the meeting, was to raise it quickly between you men, wasn't it? A. If it was, I didn't so get it. It may have been.

Q.58. Well, you contributed? A. I did.

Q.59. Who fixed the amount that you would contribute? A. I never knew.

Q.60. When did you know? A. I don't think that I ever knew until quite a while, quite a while later. I was not—shall I go on and explain to you?

Q.61. Yes, go ahead. A. I left—I rather sensed that this call for whatever money might be expected of me to contribute or my organization might either come from Mr. Street direct or from Mr. Haid. Knowing that I would be out of the city at the time that call might come, I suggested to my associate, Mr. Monroe, that he give Mr. Haid, if the call came through Mr. Haid, or from Mr. Street, if the call came from Mr. Street, the amount of money that we were supposed to assist on in raising this fund.

Q.62. Did you tell me how much was to be raised? Was it $100,000.00? A. That is right.

Q.63. You didn't know what your portion would be? A. I did not.

Q.64. And you left the meeting? A. I left the meeting I think at the time it broke up, whenever that was.

Q.65. Do you recall what time of day it was? A. The meeting was held, if I recall correctly, in the morning.

Q.66. And do you recall that your check was issued the same day as the meeting? A. That I didn't know. May 2nd, I think, is the date of the check. Was that the date of the meeting?

Q.67. Yes. A. Well, if it was, I am at a loss to explain that.

(A check, handed to the reporter, was marked for identification as "Defendants' Exhibit 109, EFM.")

A. I may very readily have left that day, which accounts probably for Mr. Monroe signing the checks.

Q.68. I hand you Defendants' Exhibit 109, which I now offer in evidence. See if that is the check you ordered issued. A. Yes, sir; it is.

(Said defendants' Exhibit 109, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

New York, [illegible] 1933 No. 128525

COMMERCIAL UNION ASSURANCE COMPANY LTD.
OF LONDON

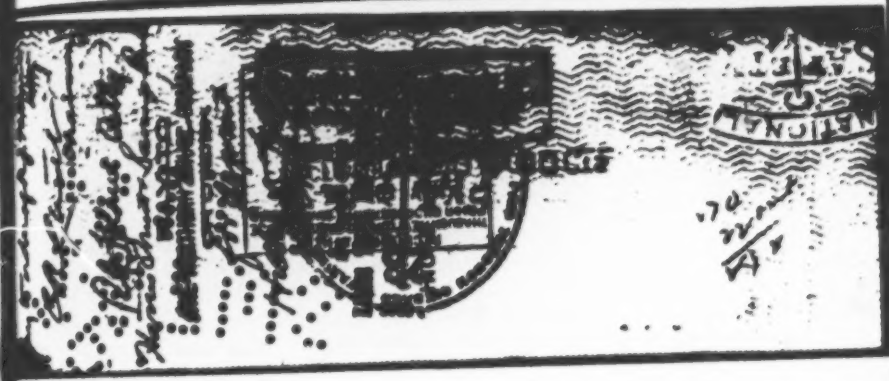
PAY TO THE ORDER OF [illegible] STREET, CHAIRMAN $ 7500.00

[illegible]

CASHIER COMMERCIAL UNION ASSURANCE COMPANY LTD.

TO IRVING TRUST COMPANY
WALL STREET OFFICE
NEW YORK

481



2 109

Q.69. You ordered it issued the very day of the meeting, didn't you? A. Well, that is about right.

Q.70. Did you know that check was going to be issued for that amount before you issued it? A. No, sir.

Q.71. Ordinarily isn't a requisition made for a check? A. Yes.

Q.72. Was there a requisition made for this check? A. There was just an office memorandum of it that it be charged to National Board expense.

Q.73. I hand you a file that has been submitted to me as being copies of your records, and see if you find that requisition in there. A. Well, it may very readily have been an order just to Monroe to issue it verbally.

Q.74. You say that ordinarily a requisition is required for each check? A. Right.

Q.75. Do you say that there was one in this case or was not? A. I would think there would be or it wouldn't have passed the auditor. It may well be that our accountant did it.

Q.76. You undertook to get up a list of all of your records, didn't you? A. Right.

Q.77. And you wrote a letter when you transmitted the records, didn't you? A. That is right.

Q.78. And you had all of the records before you at the time you wrote the letter, didn't you? A. Yes, sir.

Q.79. Well, I will refer you now to your letter and see if there was any requisition? A. No, apparently not. I wouldn't have thought it was necessary to do it.

Q.80. Well, you said it was usual to do it? A. Well, it is usual, but in order to comply with our auditors' examination—

Q.81. (Interrupting) Why didn't you do it in this case? A. Well, there wouldn't be anything so terribly upsetting with the auditor if I didn't do it.

Q.82. But it was unusual for it to happen in that way? A. Well, perhaps so.

Q.83. You were in a hurry to get that check out? A. I am not so sure that I was. I don't recall.

Q.84. Well, aren't you sure? A. Well, perhaps from what you say; I didn't realize it was the same day.

Q.85. And Mr. Street told you there was an urgent need for this money? A. Not any more than he told me at the meeting. He didn't tell me at any time.

Q.86. Well, at the meeting? A. He may have said that.

Q.87. There was an urgent need for it? A. Well, it may be.

Q.88. He told you he was wanting to make a compromise? A. Going to make a settlement. I didn't remember he used the word "compromise."

Q.89. Well, "settlement" then. He used the word "settlement"? A. He may have used both. I don't know.

Q.90. Did he tell you to whom the check should be made? A. No, I don't know that he did that. I think that I made that out or that was made out with these instructions from Mr. Haid.

Q.91. What was it he told you he wanted this money for? A. To discharge certain legal expense, including attorney fees that he wanted to get settled first.

Q.92. When a check is issued, is an entry made in your books in regard to that check generally? A. Yes.

Q.93. And are the purposes of the check generally set forth in your records? A. Not always.

Q.94. Well, that is a general thing, isn't it? A. Well, perhaps.

(Documents, handed to the reporter, were marked for identification as "Defendants' Exhibits 110, 111, 112, 113 and 114, EFM.")

Q.95. I show you Defendants' Exhibit 111, which I now offer in evidence, and ask you to point out the entry in regard to this disbursement. A. "National Local Board, C. R. Street, Chairman."

(Which said Defendants' Exhibit 111, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

Defendants' Exhibit No. D 111 is page 3 from the cash book of COMMERCIAL UNION ASSURANCE COMPANY, LTD., for the month of May, 1935, showing, among other entries, on May 2, 1935:

"N. & L. Boards C. R. Street, Chairman $7,500.00"

Q.96. For $7,500.00? A. That is right.

Q.97. And "N & L Board," what is that? A. National and Local Boards.

Q.98. What does it mean? A. The National Board is an organization to which we subscribe as companies for its services. It has as part of its service a very extensive legal department, and it was concluded by those

who have to do with that check that it was an all right place to put it.

Q.99. That "National and Local Boards" is in a different handwriting from the "C. R. Street." A. I didn't realize that. It shouldn't be.

Q.100. Well, it is. A. I will say it looks that way. I am not sure it is.

Q.101. The original entry was "C. R. Street, Chairman, $7,500.00"? A. Yes.

Q.102. Someone has added in there later, "National and Local Board"? A. I won't say they have.

Q.103. It is different handwriting? A. It would seem so but I wouldn't know about that.

Q.104. Wouldn't you say it was a different handwriting? A. Well, yes, I think from the looks.

Q.105. What did National and Local Boards have to do with the remittance from Street? A. Not a thing, I suppose.

Q.106. Why did you put it there? A. Didn't know where else to put it for the moment.

Q.107. You understood it was legal fees? A. I know, but it goes as part legal fees as it is. You—

Q.108. (Interrupting) Let's get this National and Local—

Mr. Murphy: Let him finish.

A. You have—in the National Board quite a substantial percentage of the total moneys we pay go to legal expense.

Q.109. You knew that none of the money to C. R. Street, Chairman, was going to the National and Local Board, didn't you? A. Yes.

Q.110. You knew that, didn't you? A. Let me have that again.

Q.111. You knew that none of the money to C. R. Street, Chairman, was going to the National and Local Board? A. Yes.

Q.112. You knew that? A. Yes, that is right. I knew that.

Q.113. You know this is a false entry? A. No; I don't so agree.

Q.114. Well, what is it? That is put there for the purpose of attempting to make a record showing that it was for the use or benefit of the National and Local Board? A. No, I can't agree.

Q.115. What is it put in there for? A. Well, we didn't have any other place to put it, my dear sir.

Q.116. Why didn't you put it as legal fees to Charles R. Street, Chairman? Why didn't you put it "legal fees"? A. We knew, or at least I had the feeling that some day we would get this money back. Now, we are going to get it back.

Q.117. What gave you that feeling? A. Well, I felt there would be some kind of a redistribution coming from Mr. Street, and if we charged this account, we could credit it when we got it back.

Q.118. Did Mr. Street tell you it was coming back? A. I don't know whether he told me or not but I had the feeling it might come back.

Q.119. Didn't he tell you if the compromise was not made, it would come back? A. Well, I don't recall that he said that.

Q.120. I want to call your attention to a memorandum that I have in my possession.

The Special Master: What did you say this stood for?

A. National and Local Boards, N & L.

The Special Master: What does it mean?

A. National and Local Boards, the National Board of Fire Underwriters, and the local boards would be the local boards to which we have to contribute for organization purposes, to keep our organization going.

Q.121. But what I want to get at, Mr. Koeckert, is this: you paid a check to C. R. Street, Chairman—chairman of what? A. Chairman of the Subscribers' Actuarial Committee.

Q.122. Committee? A. That is right.

Q.123. For legal fees in regard to the Missouri rate proposed compromise? A. Right.

Q.124. What did the National Board have to do with the Missouri rate litigation? A. Not a thing.

Q.125. What did the Local Board have to do with it? A. Not a thing.

Q.126. This entry was not made there idly, was it? It was made there for a purpose, wasn't it? A. Well, it was made there for the purpose of earmarking it, that it had to go to some column in our expense outgo.

Q.127. Why did you put it in this column? A. Oh, I couldn't tell you, sir.

Q.128. There was absolutely no justification for putting it there, was there? A. Probably not.

Q.129. If it had been for legitimate attorneys' fees, you could have put it as legitimate attorneys' fees? A. Subsequently that is where it went.

Q.130. You were attempting, weren't you, to make a false explanation of the Street remittance; weren't you? A. Oh, definitely not.

Q.131. That is what it does, doesn't it? A. No, it doesn't do anything of the sort.

Q.132. But it is allocated to an account to which it does not belong, isn't it? A. From what you say, apparently not.

Q.133. Well, not from what I say. I don't know anything about it.

The Special Master: Did you direct the entry to be made?

A. No, I did not.

Q.134. Who did? A. The accountant did.

Q.135. The accountant did? A. Yes.

Q.136. From whom did he get his information? A. Well, he probably got it from me.

Q.137. What did you give him? A. I told him just to put it in some item where we could identify it later, which we can.

Q.138. Why did you want to identify it later? A. Because I had a feeling we were going to get it back.

Q.139. Why couldn't you transfer it after you learned that? A. Well, I could have.

Q.140. If you had put it under legal fees, that was what you were paying it for, wasn't it? A. That is right.

Q.141. Then why didn't you put it there? Why didn't you? A. Well, we just didn't do it that way.

Q.142. Well, why? A. Well, there is no answer.

Q.143. There is no answer, is there? A. Well, I say there is no answer, I can say this to you, subsequently we did put "legal fees," as you will see.

Q.144. Subsequently, yes. When did you determine to make it legal fees? A. Well, that was under a little clearer understanding of what this was, that it was legal fees.

Q.145. Who gave you that clearer understanding? A. Well, I think I got it through either—Mr. Haid, perhaps. It probably was Mr. Haid.

Q.146. What did Mr. Haid tell you? A. Oh, well, he said, "Charge it to legal fees."

Q.147. Why did he tell you that you would charge it to legal fees? A. I think that is where probably the first one should have gone.

Q.148. I know. I am not questioning that. A. You are past that? All right.

Q.149. Why did he tell you to charge it to legal fees? A. Well, I think that was the place where the first one ought to have gone.

Q.150. "That may have gone," but why did he tell you to charge it to that? A. I can't tell you that.

Q.151. Did you ask him? A. No, I didn't.

Q.152. Mr. Haid just came to you and said what; now, Mr. Koeckert, what? A. Well, he said, "Mr. Street wants this money."

Q.153. I know, but I am talking now about charging it to legal fees, when Mr. Haid came to you without your asking and said to charge this to legal fees. A. Right.

Q.154. Did he come over to your office? A. No, I think he gave it to me over the telephone.

Q.155. Did you call him or he call you? A. No, I think he called me.

Q.156. When was it? A. Well, you are now talking about the second one?

Q.157. I am talking about when you charged this to legal fees. A. Legal fees, all right. Well, that was, I should say, about a year later. I haven't got the dates quite right.

Q.158. How did he know you hadn't charged the first one to legal fees? A. I don't think he concerned himself about that.

Q.159. Well, he called you to tell you that? A. That was for the second one.

Q.160. Did you charge the first one to legal fees? A. No.

Q.161. You haven't changed the entry on that to this day? A. No, that is right.

Q.162. So this has remained and never been transferred to legal fees? A. That is right.

Q.163. Did you take credit for it in your income tax? A. Oh, I am sure we did.

Q.164. Did the departments allow it? A. Well, now, they have called on us. I don't know what that conversation was. I don't remember that they definitely disallowed it. Somebody was looking into the matter.

Q.165. Did you tell them that it was legal fees? A. I don't know that I did.

Q.166. Why didn't you if it was? A. I don't think, if it went in as Local Board expense and National Board expense, that it would find it as legal fees in the income tax statement.

Q.167. Then if you had put it there correctly in the first place, you wouldn't have had any trouble? A. I don't know that I have any trouble now.

Q.168. You didn't get credit on your income tax? A. Well, that is probably something we lost then.

Q.169. That is that. A. Well, probably so.

General Bullitt: Is that correct or not? It certainly isn't the best evidence.

A. You are aware, aren't you, we do get credit even as National Board and Local on credit?

Q.170. I am not aware of anything regarding this company, except what I see on record. A. We do get credit for it just the same.

The Special Master: As I understand, when that N & L Board was put in there, you didn't put it in?

A. No.

The Special Master: But the accountant did?

A. That is right.

The Special Master: But the accountant knew nothing about it except what he found out from you?

A. That is right.

The Special Master: Did you know he was going to put it that way?

A. I don't know that. I now recall that he was going to put it in there.

The Special Master: But you just told him you would have to give him some kind of a name, because you didn't know what that was?

A. That is right.

The Special Master: And left that up to him to handle it any way he happened—

A. (Interrupting) That is about what happened.

Q.171. (By Senator Hollingsworth) Why didn't you tell him what it was? A. Why didn't I tell who what it was?

Q.172. The accountant. He asked you. A. Well, I probably should have but didn't.

Q.173. Well, why didn't you, Mr. Koeckert? A. Well, I didn't think it made a lot of difference at that time.

Q.174. Well, why didn't you tell him the fact? A. I don't think I would sit down and tell him what I heard or what I discussed at a meeting.

Q.175. You mean you were keeping it secret from the accountant? A. Yes.

Q.176. Then why didn't you tell— A. (Interrupting) Because it wouldn't have been my way to have done so.

Q.177. Don't you tell your accountant? A. No.

Q.178. Not in a case of this kind, is that what you said? A. Oh, no, no.

Q.179. Well, what did you say? A. Oh, well, I didn't say.

Q.180. Why did you attempt to conceal it? A. I don't think I tried to conceal it.

Q.181. You did conceal it, didn't you? A. No, I wouldn't say that.

Q.182. Didn't you say a moment ago that you wouldn't tell him? A. Well, because it wouldn't be my way ordinarily to do it.

Q.183. Do you mean your way is to deceive your accountant? A. There is no deception.

Q.184. Sir? A. That is not a deception.

Q.185. Why, it caused a false entry to be made, didn't it? A. No, I don't think so.

Q.186. It didn't belong to this account? A. Well, it was all right to put it there at the time.

Q.187. I know, but why didn't you put it to legal fees? A. Well, I didn't do it.

Q.188. And you didn't want your accountant to know? A. Well, I don't know that I cared about that.

Q.189. You didn't care one way or the other? A. Whether he knew it or not.

Q.190. Yet you deliberately told him the wrong account? A. No, I didn't.

Q.191. You didn't? A. No, I think he followed very much his own idea about it.

Q.192. That is, you concealed from him the fact that it had been contributed to Mr. Street? A. No, I don't think it is concealing.

Q.193. You don't call that concealing? A. I wouldn't know.

Q.194. You said you don't usually tell your accountant in a case of this kind. Did I understand you to say that a while ago? A. Oh, yes, that is right.

Q.195. You said that? A. Yes.

Q.196. What was there about this case to wilfully fail to tell your accountant? A. Well, I must repeat I didn't wilfully fail to tell him. I never wilfully failed to tell him in anything.

Q.197. Now, listen, I want to ask you this— A. All right.

Q.198. At the time you told him this "N & L" account, you knew that the money did not belong there, didn't you? A. Well, that is probably so.

Q.199. You knew that? A. I wouldn't say that I knew it.

Q.200. And you did know that Mr. Street had called for it for a reason, as you state, of legal fees in connection with the Missouri rate litigation? A. That is right.

Q.201. You did know that? A. Yes.

Q.202. Now, you did deliberately tell him something that you knew wasn't true, didn't you? A. Well, I still don't think that is just right. I wouldn't deliberately—

Q.203. You don't think that is just right? A. No, I don't.

The Special Master: Let me make this suggestion to you. Maybe it isn't just right, but it was made under your direction and you are the only person that understands it, and so far your explanation has not been very clear. Can't you in your own way now clear it up? You see the situation, don't you? You are the only person who knows why you did it.

A. Yes.

The Special Master: And so far you haven't told us.

A. Yes.

The Special Master: Now, try in your own way to clear it up if you can.

A. Well, I will make a good effort in that direction. I know this: this is my recollection of what happened, that Mr. Street, as I have told you, told us he had to have certain moneys, very strongly giving me the impression that it was to be for certain legal expense; whether that involved attorney fees, I rather sense that it did, but when the call came for the money, I probably overlooked saying that it should go to legal expense definitely on our books. Now, that is about the only way I can clear up what I was trying to tell you. I had hoped to get this money back some day, and if I did, it didn't make any difference for the moment whether I

put it to National Board and Local Board expense or put it to legal fees. If I got it back, it would be credited for—in the same fashion that it was debited, and in our case it doesn't make such a whole lot of difference where a thing goes as long as it is explainable, why we did it.

Q.204. Well, this is not hardly explainable, is it? A. Maybe not.

Q.205. Did you know that Mr. Street was going to Hartford the next day? A. Yes.

Q.206. He told you that in the meeting? A. He did, yes.

Q.207. Did he tell you what portion the Hartford men were to raise? A. If he did I don't recall it.

Q.208. Did Mr. Street tell you to whom he was going to turn over this money? A. I never had any talk with Mr. Street about it.

Q.209. Well, I mean at the meeting? A. No, I don't recall that he did.

Q.210. I have before me what purports to be a memorandum of the Hartford meeting in which it says, "Mr. Street is to turn this money over to our attorneys, Hicks and Folonie, but it is not to be delivered unless the settlement as above referred to is effected." Did Mr. Street tell you anything like that? A. I never heard that wording until just now. I never had a word with Mr. Street about it.

Q.211. You did expect to get the money back? A. I did, yes.

Q.212. How did you expect to get it back? A. That I do not know and that I did not know at the time either.

Q.213. What caused you to expect that you would get back attorneys' fees? A. I don't know that I had any right to expect that I would get back attorneys' fees.

Q.214. But you did expect it? A. No, I don't think I expected the money, if I was to get it back, that it would be attorneys' fees.

Q.215. What made you expect that you would get your portion of $100,000.00, to-wit: $7,500.00 back? You paid it out for attorneys' fees, didn't you? A. It is more than that; it is $8,200.00.

Q.216. I am talking now about the first check. We will get to the other. A. Well, I sort of got the impression that I might get it back.

Q.217. How did you get it? A. I don't know how I got it.

Q.218. You were paying it for legitimate attorneys' fees? A. I would think so.

Q.219. And you generally get back attorneys' fees that you pay? A. No.

Q.220. Did you ever? A. No.

Q.221. Then what made you expect it? A. I had no right to expect it, I suppose.

Q.222. Then did you expect to get it back? A. I expected to get some money back.

Q.223. I know, but did you expect to get any part of this back? A. Not any part of the lawyers' expense.

Q.224. Then what made you say a moment ago that you did expect to get it back? A. Well, I think there was some intimation given to me that there might be a redistribution.

Q.225. Who gave you that? A. I don't know who did it.

Q.226. It was in this meeting? A. I think probably something may have been said by Mr. Street about that.

Q.227. What did he say? A. I don't know. I can't remember.

Q.228. He did say it would come back if the compromise were not effected? A. Yes, I think you are probably right.

Q.229. And he said that these so-called attorney fees would come back to you if a compromise was not effected, didn't he? A. I don't know that he said it just in that language.

Q.230. How did he say it? A. I don't know.

Q.231. But he did say what I just mentioned? A. Probably so.

Q.232. So that you knew that these so-called attorney fees would come back to you if the compromise were not effected?

General Bullitt: Wait a minute. If your Honor please, all through this examination—I am not trying to evade anything—counsel is just arguing for conclusions. All the witness can tell is what was said or the substance and effect of what was said. That is easy enough to explain, why the witness is wandering around.

The Special Master: No, I do not think that is quite true. I think in view of the fact that this is a man who has dealt with a man that is dead, that in truth and fact the transaction did finally end up as it should not have ended up, and in view of the fact that the witness says that he was given no explanation of what it was for,

that he has a right to ask questions, more than just exactly what he did. His understanding of the thing and what he thought it was is to my mind tremendously important. I think that is what I am here for, is to find out what he thought about it.

General Bullitt: Well, that is all right.

Senator Hollingsworth: Read the question, please.

(Question read.)

A. Probably so. I don't have any recollection of what Mr. Street said about that point.

Q.233. I know, but you left there with a definite impression that it was to come back to you? A. You are probably right. I probably did.

Q.234. It was to come back? A. Yes, I am sure I did.

Q.235. You knew then, of course, that it was not legal fees, didn't you? A. No, I am not so sure. I would believe anything Mr. Street told me.

Q.236. I know, but your common sense told you, when you were talking about a compromise down there and he said that he needed money, and that if the compromise did not go through you would get your money back, you knew that it was not legal fees, didn't you?

Mr. Murphy: He didn't testify to that.

Q.237. You thought it was for legal fees?

Mr. Murphy: That he would get it back if the compromise—

The Special Master: He said he had the impression he would get it back.

Mr. Murphy: He didn't say he heard Mr. Street say anything to that effect.

The Special Master: I know, but here is a man who says he just paid out money without any explanation, or if there was any explanation, he cannot remember the words, but he does say he got the impression out of that conference that he might get that money back. And he also says if the compromise did not go through, he had the feeling that he was going to get it back.

Mr. Murphy: The thing they are talking about, the mix-up is as to whether he gets it back in money or gets it back as attorney fees.

The Special Master: That is one way of looking at it.

Mr. Murphy: What is the fact? I don't know what the fact is.

The Special Master: Just the same, what has already gone justifies him in pursuing the inquiry. Whether he succeeds in establishing it enough is an entirely different thing.

A. May I add this, that is probably not a good matter of record; anything Mr. Street would have asked I would have given him without explanation. He could have had fifty times the money that he asked me to pay.

Q.238. (By Senator Hollingsworth) But your common sense— A. (Interrupting) He was my employer for years and a great man in my opinion, and I would have given him anything he asked for, including the whole of the cash box. That is how I felt toward him.

Q.239. But you thought you were going to get this back? You left this meeting under that impression? A. I think I did.

Q.240. Then your common sense told you it was not for attorneys' fees, didn't it? Your common sense told you that, didn't it? A. I may not have had any common sense about it.

Q.241. Whatever you had did tell you that, didn't it? A. Probably so.

Q.242. It did tell you that? A. Probably so.

Q.243. Then you knew in your own mind that Mr. Street was naming this attorneys' fees when it was not to be used as attorneys' fees, didn't you? A. That I couldn't say, because I still maintain if he said attorneys' fees to me he meant it.

Q.244. Well, all right. Did he mention the fact to you that Thomas J. Pendergast was a lawyer? A. No, I don't remember him saying anything about Mr. Pendergast.

Q.245. What Missouri personages did he name? A. Well, he said "the authorities." Now, I don't know what he meant, whether he meant by "authorities" the insurance department officials. I knew very little about Mr. Pendergast.

Q.246. I know you know very little. Mr. Street told you that, didn't he? A. No, I don't think he did.

Q.247. Who did tell you? A. That is only my own observation.

Q.248. Mr. Street mentioned Mr. Pendergast's name? A. If he did I don't recall it.

Q.249. You say he didn't mention him? A. If he did—

Q.250. (Interrupting) He told you there was a powerful person in Missouri? A. Oh, yes, that I remember him saying.

Q.251. He did say that? A. Yes.

Q.252. He said there was a powerful person in Missouri who might help him get this compromise through? A. No, I don't think he went quite that far.

Q.253. How did he mention the powerful person in Missouri? What did he say about him? A. Well, he said he had to have certain kinds of money for this legal expense.

Q.254. That is right. A. Now, he did not mention in the same breath or in the same connection any powerful interests.

Q.255. He mentioned a powerful person in Missouri? A. He probably did.

Q.256. What did he say about that powerful person in connection with this compromise? A. I do not recall.

Q.257. But he did mention him? A. He probably did.

Q.258. That is your recollection? He mentioned a powerful person in Missouri at the time he was talking about getting this compromise through, didn't he at that meeting? A. Well, if he did, I don't so recall it.

Q.259. What did he say about the powerful person? A. Well, he didn't say much about the powerful person, as I remember.

Q.260. What did he say? A. He said more about this annoying rate case.

Q.261. I understand— A. (Interrupting) And I had a good deal of sympathy with him about that.

Q.262. What did he say about the powerful person in Missouri? A. I don't think he said anything, if he—

Q.263. (Interrupting) You said a while ago that you thought he did. A. Well, no, I would say offhand he didn't. I don't recall it, sir.

Q.264. What did he say he was going to use $100,000.00 for in connection with this powerful person? A. To get certain preliminary expense out of the way. I don't even recall whether he said he incurred it or it had been incurred, but he said it was necessary to have that much money to get certain—

Q.265. Results? A. No, not results, certain preliminary expense out of the way that had to be gotten away first, because, if I recall correctly, the moneys that he had—I remember it came to my mind, why doesn't

he use the trust money. He said he couldn't use the trust money, or rather he gave me that impression that he couldn't.

Q.266. Why? A. That I don't know. I can't answer that.

Q.267. Did you ask him why he couldn't use the trust money? A. No, I didn't ask him anything.

Q.268. Well, it came to your mind? A. That is all.

Q.269. He mentioned the trust money? A. I wouldn't have questioned Mr. Street, sir.

Q.270. Well, I know, but he mentioned he couldn't use the trust money, didn't he? A. No—yes, I think he sort of touched on that. Yes, he did.

Q.271. He sort of touched on it? A. That is right.

Mr. Murphy: I think you are confusing the meetings now.

Senator Hollingsworth: No. I am talking about this meeting in New York.

Q.272. You know the one I am talking about? A. Yes, the May meeting.

Q.273. May, 1935?

Mr. Murphy: There wasn't any trust money then.

Senator Hollingsworth: Well, that may be.

Q.274. You are a member of the Actuarial Committee, aren't you? A. I am.

Q.275. And a member of the Subscribers' Actuarial Committee? A. That is right.

Q.276. And were in 1935 and 1936? A. That is right.

The Special Master: Were you located in Chicago at that time?

A. No, I was the New York member of the committee.

The Special Master: Did you meet with the committee?

A. As often as I could, not at all of the meetings.

Q.277. As a matter of fact it did meet in Chicago? A. It always meets in Chicago. I have never known of a meeting except perhaps at White Sulphur sometimes in the spring or the fall.

Q.278. Did he tell you that the Actuarial Committee had recommended this settlement? A. He didn't tell us anything.

Q.279. You knew, in fact, it hadn't? A. That is right.

Q.280. Was the compromise ever brought up in the Actuarial Committee? A. If it was, I wasn't there, or if it was brought up I don't recollect anything he said.

Q.281. As a member of the Actuarial Committee, did you ever reveal to it that Mr. Street had come up here and taken $7,500.00 of your money? A. I wouldn't do a thing of that kind, sir.

Q.282. You couldn't do it? A. Not to Mr. Street.

Q.283. Why wouldn't you? A. My regard.

Q.284. Was there a secret about it that you couldn't report? A. Nothing secret, but to me he was the last word of responsibility and integrity.

The Special Master: Would you have felt, if you had reported to the committee of which you were a member, who ostensibly had charge of this litigation, that Mr. Street had made an assessment on these companies that you would have been going behind his back or something?

A. Well, I would very definitely have felt that and I would have felt also if anything like that was to be said to Mr. Street those who were perhaps a little closer to him in Chicago would have done whatever was necessary, and I wouldn't have thought anything was necessary.

Q.285. In other words, you thought you were under an obligation not to reveal to the Actuarial Committee the fact that Mr. Street— A. (Interrupting) No.

Q.286. (Continuing) —had collected this money from these companies? A. Distinctly not. I hadn't any such feeling.

Q.287. Then why wouldn't you have reported it? A. I know I wouldn't do it.

Q.288. Why wouldn't you? A. Because I trusted Mr. Street so definitely.

Q.289. Well, the compromise went through, as you knew? You learned that? A. Well, yes, I did learn it.

Q.290. That was reported back to the actuarial Committee, wasn't it? A. If it was, I don't know just in what form.

Q.291. It was discussed in the Actuarial Committee, wasn't it? A. If it was, I wasn't there.

Q.292. After it went through, you knew that a federal court decree followed? A. That is right.

Q.293. Then you became familiar with the terms of that compromise? A. Yes.

Q.294. You knew that 20 per cent was to go to the policyholders? A. Yes, sir.

Q.295. And 50 per cent outright to the companies? A. That is right.

Q.296. And 30 per cent was reserved in the hands of Mr. Street and Mr. Folonie as trustees? A. That is right.

Q.297. For what purposes? A. To pay further and extraordinary expenses.

Q.298. What were they, attorneys' fees? A. I hadn't any idea. I presume a greater portion of it was made up as attorney fees.

Q.299. You knew about the amount of the impounded premiums? A. I knew my share of them, and I think I could estimate the share of all of them.

Q.300. You knew there was over $9,000,000.00? A. That is right.

Q.301. You knew that 30 per cent was in excess of $2,500,000.00? A. Yes, sir.

Q.302. And you considered it a fortunate settlement and were glad the case was out of the way, is that right? A. Yes, sir.

Q.303. Then you got a dividend of 11 per cent? A. Yes, sir.

Q.304. You knew that came out of the 30 per cent? A. That is right.

Q.305. And on the very day that you got the dividend out of the 30 per cent, you got a call to deliver back to C. R. Street, Agent, 5 per cent, didn't you? A. That is right.

Q.306. Who gave you that information? A. I got that through Mr. Haid, if I recall.

Q.307. How did you get it, over the telephone? A. Yes, by telephone.

Q.308. What did Mr. Haid say to you? A. Well, he said there was going to be a further dividend. Now, I am not so sure whether he used the word "dividend," but contribution out of the 30 per cent, the 30 per cent expense item, and of course, that was quite pleasing to me, but I would have to give back a total of 5 per cent, as I remember it. So that while I got 11 per cent, I had to pay in 5 per cent.

The Special Master: You netted 6 per cent?

A. That is right.

Q.309. What did he tell you that was for? A. Well, he said—I don't think he told me. I think he said it was just some distribution Mr. Street was making.

Q.310. To whom? A. To the companies.

Q.311. You are talking about the 11 per cent? A. I am talking about the 5 per cent. That would go to Mr. Street as a further 5 per cent of our impounded premiums that he had to have.

Q.312. What kind of expenses? A. The same kind of expenses had in the first instance.

Q.313. You knew the 30 per cent was to take care of that? A. I didn't know; I supposed it would. But I felt like—I naturally would feel that if I could get in an extra dividend I was very happy about it.

Q.314. But you knew there was money in the 30 per cent to pay it when you got the 11 per cent dividend? A. That is, I should have known it.

Q.315. You did know it, didn't you? A. Well, I didn't think much about it.

Q.316. Didn't you think it most unusual that you would get a check from the trustees of this fund? A. Not as long as Mr. Street handled it.

Q.317. Oh, and you turned it over to Mr. Street? A. That is what I did do.

Q.318. Did you assume, of course, that all other companies were paying into the hands of Mr. Street 5 per cent of the impounded funds for additional expenses? A. I didn't give that any thought. I assumed they were doing it, yes.

Q.319. You knew that would amount to $450,000.00 and more? A. That I didn't know.

Q.320. You knew there was over $9,000,000.00? A. Right.

Q.321. So you did know that? A. Well, that is right.

Q.322. Did you raise—

The Special Master: What you mean is you could have known it if you had stopped to calculate it?

A. That is correct.

The Special Master: You had the means of knowing it?

A. Of doing it, yes.

Q.323. But you didn't stop to calculate it? A. No, sir.

Q.324. I am not positive—I have had this marked. Did I have you identify this $7,500.00 check? A. You did. If you didn't, I do it now.

Q.325. But I don't think I had you identify this one. A. That is my signature.

Q.326. Defendants' Exhibit 110, that is the 5 per cent check? A. That is right.

The Special Master: Have you introduced both of them?

Senator Hollingsworth: Yes. I now offer Defendants' Exhibit 110.

(Which said Defendants' Exhibit 110, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

NEW YORK MAR 21 1936 193 No. 145685

COMMERCIAL UNION ASSURANCE COMPANY LTD.

PAY TO THE ORDER OF C. A. STHEEL, AGENT $ 6281.67

[illegible] 57 CTS.

COMMERCIAL UNION ASSURANCE COMPANY LTD.

CASHIER

AUDIT

TO IRVING TRUST COMPANY
WALL STREET OFFICE
NEW YORK

RECEIVED PAYMENT
THROUGH NEW YORK CLEARING HOUSE
ENDORSEMENTS GUARANTEED
MAR 24 1936
THE CHASE NATIONAL BANK
OF THE CITY OF NEW YORK
1-74

N45

MAR 23 1936

Q.327. Mr. Haid gave you these amounts over the telephone in regard to the 5 per cent? A. That is my recollection, yes.

Q.328. There was no letter transmitting your 11 per cent? A. No.

The Special Master: Mr. Koeckert, there is some testimony in this case by some witnesses out at Chicago, and much along the same line that you have given, indicating that Mr. Street held their unbounded confidence, their absolute, unconditional confidence in all things, and I take it that while you did not use that language, that is approximately the confidence he held at your hands?

A. He certainly did.

The Special Master: And they also say that there were a lot of things that they did not ask him because he was a man that didn't very well brook cross examination about what he was doing, and did not like to be asked things or questions, and if he did not want to tell them, he would not tell them, and often they would not ask him things because they felt if he did, they would get no answer. How did he strike you in that respect? Did you notice any such a trait as that?

A. Oh, very much so. You may multiply by whatever multiple you want to of anything you heard in Chicago, and that is my association with Mr. Street.

The Special Master: I am trying very hard to visualize—

A. There I was, a boy in Indiana with not much future, and he brings me to Chicago, and he puts me in a position where I can get on.

The Special Master: Make the grade?

A. Make the grade, as it were, and I believed in everything that he told me. Now, in later years, as I became a competitor of his, I had to and I did take certain things from Mr. Street that I stood as long as I could, and then I had to tell him. It had nothing to do with Missouri, what I am telling you, but things—he thought my conduct wasn't all that it should be, but always he would come back and say, "My boy, I knew you were right," and that only added to my affection for the man. I wouldn't have it any other way.

The Special Master: But he was a man that didn't brook examination?

A. Not only was he that, but when he was on an important committee, he was the committee and nobody else.

The Special Master: And he not only—

A. And if you asked him anything or if you undertook to say, "Now, just why are you doing this, Mr. Street, may I ask?" "You leave that to me." I am not talking now about Missouri.

The Special Master: I know, generally speaking.

A. Yes, and in a multiple of important committee situations he would be just that way, and the older he got—

The Special Master: The more arbitrary he was?

A. The more arbitrary he became. I was sorry to see some of that. I wished often he had retired in the earlier years.

The Special Master: I want to know these things. They are very important.

A. Well, I wished he had retired earlier than he did, because in later years I saw this change coming over him. As I told you, I held him in greatest esteem.

The Special Master: Well, it is just a little hard for me to understand, and perhaps you can help me, why it was that a man who was naturally secretive and naturally not given to taking people into his confidence, could hold their confidence. That is not the usual run. It does not usually work out that way. Ordinarily a man who is secretive and will not take people into his confidence does not gain people's confidence.

A. He had risen to a high point in our business, a point where the work that he had done, the time and the effort he put in it, and the sincerity of purpose, that everyone just held him in that great respect, so that you wouldn't, you just wouldn't—I didn't at least—ever think of asking him, "Why are you doing so and so? Why must you do it this way?" There probably wouldn't be another character like him in the business.

The Special Master: Of course, he had risen to a high position in the insurance world. But some of the rest of you, you, for instance, in fact at that time, were holding a higher position in the insurance world than he was, and so was Mr. Kurth and so was Paul Haid, and so were other men higher in the insurance world than he?

A. Right.

The Special Master: The truth is he had taken a step back. He had when he came east, he had not quite made

it, and you say that he was secretive, that he would not take people into his confidence. It seems strange to me that a man who would not take other people into his confidence could hold their confidence. Can you explain it, or is it just one of those things?

A. I think that is the answer, just one of those things. I can't imagine any man who labored with him or tried to take an interest in the business ever wanting to approach Mr. Street for an explanation.

The Special Master: Because he would not give it if you did?

A. Well, that is about right, and then he would feel so hurt, he would feel so, for instance—again this has nothing to do with Missouri—

The Special Master: Well, it has something to do with Mr. Street and his relations with the rest of you, and that is what I am trying to understand.

A. He turned on me on one occasion—not about Missouri—and said, "But since when don't you trust me?" I told him I did trust him. I told him that every man in the business that he thought a lot of trusted him. The trouble was he had gotten to the place that he hadn't trusted us, but we did not go into anything that he was handling.

The Special Master: Yet as to all of your trusted agents that worked for you, you required complete reports from them?

A. That is right.

The Special Master: The fact you trusted them would not excuse them one minute from making a complete report for every dollar they handled?

A. That is right.

The Special Master: That does not hardly line up with the way you all acted with Mr. Street, and I am trying to understand it, if I can.

A. Yes.

The Special Master: The best explanation that you can give is that that is the way it was?

A. That is the way it grew to be.

The Special Master: There was never a time, was there, when you felt that you could go to your Board of Directors or to your home office and tell them, "Well, I spent the money, but you will have to trust me and if you do not trust me, I am offended and I am hurt." You would not have expected to get away with that yourself?

A. No, I would expect some very severe treatment.

The Special Master: Or if you had handled money from Mr. Street's company, you would not have expected to get by that?

A. No, not a bit. That is quite right.

The Special Master: Never for a minute would you expect to excuse yourself in Mr. Street's eyes by telling him you expected him to trust you?

A. That is right.

The Special Master: All right. I was just trying to get the picture.

Senator Hollingsworth: That is all.

Cross Examination by Mr. Bullitt.

XQ.329. How old were you when you first met Mr. Street? A. Mr. Street invited me to come to Chicago in 1908, and I was then—I was born in '79. I was then—

XQ.330. Twenty-nine years old? A. Twenty-nine years old.

XQ.331. What had you been doing before that? A. I had traveled in Indiana for his company.

XQ.332. You didn't meet him until 1908? A. No, I met him several times.

XQ.333. That is what I asked you. I asked you how old you were when you first met Mr. Street. A. No, that was when he brought me into the Chicago office in 1908. My first meeting with him was in 1904.

XQ.334. That is what I asked you. Then at that time you were about 25 years old? A. That is right.

XQ.335. What were you making when you first met him? A. $2,700.00.

XQ.336. In 1904? A. That is right.

The Special Master: That wasn't bad for 25 years old.

A. In those times.

XQ.337. Then how long after 1904 was it before you left being his subordinate? A. I left being his subordinate in 1912.

XQ.338. In nineteen what? A. In 1912.

XQ.339. You then were really only four years under him in Chicago? A. That is right.

XQ.340. Then you went with some other company? A. No, I went with another company of the same group, the Western Department in Chicago.

XQ.341. Mr. Koeckert, what were your impounded funds at the time you had these talks with Mr. Street in 1935 and again in 1936? A. $315,633.52.

XQ.342. You got back out of that 50 per cent or $157,500.00, didn't you? A. That is right.

XQ.343. And then you later got back another 11 per cent, didn't you? A. That is right.

XQ.344. That is thirty-four thousand odd dollars, isn't it? A. That is right.

XQ.345. So you got back a total of $192,150.00, didn't you? A. That is right.

XQ.346. Now, at the time you had these talks with Mr. Street in 1935, when he was talking about a possible settlement and your getting some money back, you did get back $192,500.00, didn't you? A. Yes.

XQ.347. When you said in your direct examination that you had the impression that you might be getting some money back after you made this contribution toward the $150,000.00 and the $350,000.00, that confidence of yours was justified? A. Yes, sir.

XQ.348. You got back $192,000.00, didn't you? A. That is correct.

XQ.349. Isn't it a fact that when you were saying that you expected to get some money back after you had made these contributions to Mr. Street, you did get the money back? A. Yes.

XQ.350. Whether you got it back as so-called attorneys' fees or whether you got it back as cash, you got the money back? A. That is right.

XQ.351. And the total amount that you paid out to Mr. Street was only about how much? A. $15,781.67.

XQ.352. That was out of the $192,000.00 that you did get back? A. That is right

XQ.353. So you got back every dollar of the contribution that you made to him, didn't you? A. That is right.

The Special Master: Altogether he received 56 per cent, and he paid out 60 per cent.

Mr. Bullitt: That is right.

The Special Master: Five percent.

Mr. Bullitt: He paid 5 per cent.

The Special Master: He received 57 per cent.

XQ.354. (By Mr. Bullitt) Whether you got it back as attorneys' fees, you got the money back, every dollar that you paid out, you did, in point of fact, get back as the part of the settlement? A. Yes.

XQ.355. Since that you paid that back under the recent order of the judge? A. Yes.

XQ.356. That is now in litigation? A. Right.

XQ.357. Did you read the newspaper accounts that appeared in Kansas City and other newspapers here a month or two ago about the Pendergast and O'Malley convictions? A. I read very little of it.

XQ.358. Here is the thing I want to ask you—I was out of the room, but I understand that you said some thing about the possibility of having it referred to a powerful person. Now, did he say that at that time or is that something you read in the newspapers, that have appeared since, when he said that he paid it to some person not an official? A. I have not a very distinct recollection what Mr. Street said about any powerful person. In that May meeting he may have said it, but if he did, I don't recall.

XQ.359. Now, it is quite important to remember whether he said anything to this group of people about the powerful person, and if so, what he said about the powerful person. A. Mr. Bullitt, he may have very well said it, but if he did, I don't remember what he said about it.

XQ.360. Well, have you any recollection now, your own independent recollection, that he did say anything about a powerful person? If so, state just what he said. A. No, I do not.

The Special Master: That is a double question. Let's put the single question. Do you have any recollection of him using the expression, or substantially the expression, "A powerful person in that conference"?

A. No, I do not.

The Special Master: You put it both ways.

Mr. Bullitt: Yes. We will let it go. That is all I want to know. That is all so far as I am concerned.

Re-Direct Examination by Senator Hollingsworth.

RDQ.361. You have read in the press that the money that went to Mr. Street went for corrupt purposes to Tom Pendergast? A. I think I read something like that.

RDQ.362. Did you go out to Kansas City? A. No, I did not.

RDQ.363. You believe that to be a fact from what you have read and heard, don't you? A. I think I must.

RDQ.364. Then you know that you never got a dollar of the money back that you advanced here, that it

went to corrupt Tom Pendergast? You know that now, don't you? A. No, I don't think I do.

RDQ.365. You know it went into Tom Pendergast's hands? A. I couldn't say that.

RDQ.366. You believe that to be true? A. Well, I don't know.

RDQ.367. Assuming it to be true, you never got one dollar of the money back?

The Special Master: Well, that is argument. In the first place, he doesn't know what became of the money. He read it in the papers and knowing nothing more about it, he is not going to believe that is true until he hears more about it, of course, but he does not know anything about that except what he has read in the papers, according to his testimony.

Senator Hollingsworth: That is all.

(Witness excused.)

Senator Hollingsworth: We now offer in evidence Defendants' Exhibits 112, 113 and 114.

(Which said Defendants' Exhibits 112, 113 and 114, so offered in evidence, having been previously duly marked, are in words and figures as follows:)

Defendants' Exhibit No. D 112 is page 138 from the Ledger of COMMERCIAL UNION ASSURANCE COMPANY, LTD., entitled "National & Local Boards," showing entry, among others, under date May 2, 1935:

"To Cash C. R. Street, Chairman $7,500.00"

Defendants' Exhibit No. D 113 is page 249 from cash book of COMMERCIAL UNION ASSURANCE COMPANY, LTD., for the month of March, 1936, showing an entry, among others, on March 21, 1936, as follows:

"Legal Exp. C. R. Street, Agent $8,281.67"

Defendants' Exhibit No. D 114 is page 321 from Ledger of COMMERCIAL UNION ASSURANCE COMPANY, LTD., entitled "Legal Expense," showing, among other entries, on March 21

"To Cash C. R. Street, Agt. $8,281.67"

THOMAS C. MOORE, being produced, sworn and examined as a witness on behalf of the defendants, testified as follows:

Direct Examination by Judge Henson.

Q.1. State your name or initials. A. Thomas C. Moore.

Q.2. What was your position with the Potomac Insurance Company in the years 1935 and 1936? A. Vice-President and manager.

The Special Master: Are you manager for the whole company?

A. For the Potomac, yes. It is a small company.

The Special Master: You do not have a western division?

A. No.

Q.3. Your company was involved in a rate litigation in Missouri? A. Yes.

Q.4. Did you hear that that rate litigation had been compromised and settled? Did you ever hear that? A. Yes, we had that, as a matter of fact, the information we got was from the Missouri Inspection Bureau.

The Special Master: What was it, a circular letter?

A. Yes.

The Special Master: Giving a synopsis of the terms?

A. Yes, sir.

Mr. Bullitt: What date?

A. June 12, 1935.

The Special Master: May I see what you received?

A. I think that is the first we had.

Judge Henson: I am satisfied it is.

A. That seemed official.

The Special Master: It seems to be a printed circular sent out by the Missouri Inspection Bureau.

A. That speaks for itself, so far as I know. I simply found it in looking through trying to refresh my memory, which I am sorry to say isn't any too good.

The Special Master: I do not know; it is better than if you were trying to rely on your memory, if you find something in writing that you received.

(A circular and a report, handed to the reporter, was marked for identification as "Defendants' Exhibits 115 and 116, EFM," respectively.)

Q.5. (By Judge Henson) Mr. Moore, I show you what has been marked as Defendants' Exhibit 115, and ask you if that is the circular letter received from the

Missouri Inspection Bureau under date of June 12, 1935? A. That is right.

Q.6. And attached to it I show you Defendants' Exhibit 116, and will ask you if that purports to be a report of the litigation settlement, that contains four pages itself? A. That is true. I think they came to us together.

Judge Henson: Now, I offer—

Mr. Berger: (Interrupting) I haven't any objection, but I don't think it fulfills the purpose for which you intend it.

The Special Master: Let me read it. I can see what it is. Instead of putting this whole thing in, can it not be admitted that attached to the letter marked "Exhibit 115" there was a printed circular, which stated that 20 per cent of the impounded funds would be returned to the policyholders, and that the state would be reimbursed to a definite extent for the state's expenses, and that the balance of the collections should be returned to the companies, but that other than that statement just now stated, there was an analysis of proposed new rates, and how they would apply, which has nothing to do with the pending investigation; can that be admitted?

Mr. Berger: I think that is right.

Judge Henson: Yes, that is right.

The Special Master: By doing that you leave out an awfully lot of stuff that has nothing to do with this lawsuit.

Judge Henson: In view of that stipulation, I will not offer 116, but I will offer Exhibit 115.

(Which said Defendants' Exhibit 115, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

"DEFENDANTS' EXHIBIT 115."

"Missouri Inspection Bureau
1330 Pierce Building
St. Louis, Mo.

June 12, 1935.

To Agents:

We are writing you at the request of our subscribers so that you may be placed in possession of information respecting settlement of insurance rate litigation.

Settlement has been agreed upon between the Superintendent of Insurance and the companies. Its comple-

tion awaits the action of the courts to which it will be presented.

Notwithstanding newspaper statements to the contrary it is a fact that the settlement has not been presented to any court up to the present time nor has any court expressed its opinion as to its propriety.

The enclosed resume of what the settlement will accomplish, if completed, will put you in possession of its terms in a general way. After you have given it study, if you are of the opinion that the settlement is a constructive action to the benefit of the policyholders of this State your companies would appreciate it if you would have representative policyholders write to the Superintendent of Insurance, Honorable R. Emmet O'Malley, to that effect.

The insuring public must necessarily look to the agents of the State to give them information respecting details and benefits of this settlement as otherwise they have no resort except to distorted statements from uninformed sources.

Aside from the obvious benefit to policyholders from reductions in rates, there is also the very important consideration that if the matter is satisfactorily settled sound relations between the State and the insurance fraternity can be reinstated which have been gravely interrupted over many years of time.

Yours very truly,
(signed) P. W. Terry
Manager.

P. S. The reductions referred to in the enclosed resume will not be effective until settlement is completed and you are specifically advised."

Q.7. (By Judge Henson) Mr. Moore, what more do you recall that you heard about the compromise after the receipt of this Exhibit 115 on June 12, 1935? A. I don't think I heard anything more about it. We may have had a letter from the Actuarial Committee.

Q.8. The Actuarial Committee? A. I don't recall whether we did have it or not.

Q.9. Well, I will ask you if you do not now recall that the Actuarial Committee sent you a full report of the federal court's decree of February 1, 1936, shortly after it was made? That would be some months later

than this. A. Well, I am sure it is in our file. Yes, I would say that.

Q.10. Do you recall in a general way what the settlement was, the percentages? Can you state to us what they were? A. 20 per cent to the policyholders and 50 per cent to the companies and 30 per cent to the companies through their trustees.

Q.11. Do you recall authorized pay-outs in the 30 per cent? A. No, sir, I know nothing about that.

Q.12. You do not recall that the 30 per cent was to bear the expenses of the litigation and, if anything remained, that was to go to the companies? A. That was the understanding. Yes, I am sure that was my understanding.

(Documents, handed to the reporter, were marked for identification as "Defendants' Exhibits 117 and 118, EFM.")

Q.13. I hand you Defendants' Exhibit 117, purporting to be a check dated March 24th, for $2,450.74, and will ask you if you recognize that as a photostatic copy of a check that was issued on that date at that time? A. I do.

Q.14. And is this side the photostat of the endorsements on that check? A. Yes.

Q.15. Who wrote that check, Mr. Moore? A. What do you mean, in the office? The clerk.

Q.16. Who signed it? Whose signature is that on there? A. That is my signature.

Q.17. Did anyone—

The Special Master: Now, Judge, if you do not offer it now, I will forget whether you ever do or not.

Judge Henson: That is just exactly what I am going to do right now.

The Special Master: Then ask him questions.

Judge Henson: I now offer Exhibit 117.

Mr. Bullitt: You don't have to identify them. I have told you that on all the others.

Judge Henson: Last week you were objecting because we didn't identify them to the witness.

Mr. Bullitt: No, we didn't. We told you any papers of which you had photostatic copies, and unless we objected—

Judge Henson: I offer Exhibit 117.

(Which said Defendants' Exhibit 117, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

No. 22661

THE POTOMAC INSURANCE COMPANY

OF THE DISTRICT OF COLUMBIA

MAR 24 1936

AGENCY DEPARTMENT OFFICE, GENERAL BUILDING, PHILADELPHIA

PAY TO ORDER OF C. R. STREET, AGENT, $ 2,450.74

THE SUM OF EXACTLY $2450.74/100 DOLLARS

IN PAYMENT OF GENERAL LEGAL EXPENSE IN CONNECTION WITH THE MISSOURI IMPOUNDING.

TO THE FIRST NATIONAL BANK
3-20 PHILADELPHIA, PA.

COUNTERSIGNED

ASSISTANT SECRETARY

THE PRESIDENT AND MANAGER

THE ENDORSEMENT OF THIS CHECK BY THE PAYEE CONSTITUTES A CLEAR RECEIPT IN FULL SETTLEMENT FOR THE CLAIM OR ACCOUNT ON THE OFFICE SIDE.

FOR DEPOSIT WITH
CITY NATIONAL BANK
AND TRUST COMPANY
OF CHICAGO

PAID THROUGH CHICAGO CLEARING HOUSE
P 11 M
MAR 26 1936
THE
CHICAGO
BANK OR BANKER

PAY TO THE ORDER OF
ANY BANK, BANKER OR TRUST CO.
PRIOR ENDORSEMENTS GUARANTEED

MAR 28 1936

TRADESMENS NAT'L BANK & TRUST CO.
PHILADELPHIA, PA.
DELY. CASHIER 3-14

Q.18. (By Judge Henson) Mr. Moore, who authorized the issuance of this check? A. Mr. Dent, whose signature is W. C. Dent, Assistant Secretary of the Company and my assistant. If it is proper for me to say this, my signature was attached to that check and a number of other checks before I left the office. I wasn't in the office the day that check was written and delivered.

Mr. Bullitt: You signed it in advance in blank?

A. I signed it in advance in blank, because it required two other signatures.

Q.19. Is that all you know about the authorization of this check, Mr. Moore? A. You don't want any hearsay from me? You want to know what I know about it?

Q.20. Yes, sir. A. That is all I know about it.

Q.21. I will take any hearsay you had from any of your associates. A. When I returned—if you will look, you will find a voucher for that check there.

(Said voucher, handed to the reporter, was marked for identification as "Defendants' Exhibit 119, EFM.")

Q.22. I show you Exhibit 119, and ask you if that is the voucher you just mentioned. A. Yes, sir.

Judge Henson: I now introduce Defendants' Exhibit 119.

(Which said Defendants' Exhibit 119, so offered in evidence, having been previously duly marked, is in words and figures as follows:)

REQUISITION FOR CHECK

CHECK No. 28641

THE POTOMAC INSURANCE COMPANY

OF THE DISTRICT OF COLUMBIA

AGENCY DEPARTMENT OFFICES

GENERAL BUILDING . . . . PHILADELPHIA 3-24-36

Pay to C. R. STREET, AGENT, $ 2,450.74

the sum of Twenty four hundred fifty and-74 /100 Dollars

for GENERAL LEGAL EXPENSE IN CONNECTION WITH THE MISSOURI IMPOUNDING.

DEPT	AGENT DIRECT	AGENT SUB	STATE	CITY	CLASS OF EXPENSE	KIND OF EXPENSE	AMOUNT
5	—		24	—	93	24	[illegible]

Charge to Ledger Account 1 1 Charge Legal Expense 4

Requisition Made by [illegible]

Executive Approval [illegible]

MAR 30 1936

$ 2,450.74

C. R Street, Agent

General Legal Expense

2119

Q.23. (By Judge Henson) Mr. Moore, you say you wrote this requisition or voucher for the— A. (Interrupting) No.

The Special Master: No, he did not answer the question. Who did write the voucher?

A. Well, the voucher was actually written by a stenographer under the dictation of the chief accountant.

Q.24. Who is that? What is his name? A. Mr. George Dearborn is the chief accountant, and the check, as I explained, I had already signed in advance, a blank check.

Q.25. Your initials appear on this requisition? A. Yes.

Q.26. Right here (indicating)? A. Yes.

Q.27. Those are your initials? A. Yes, sir, made on March 30th. The check was issued on the 24th.

Q.28. 1936. Why was your initial on that? A. Because all checks that I sign in advance on account of absence must be referred to me, and I approve the voucher before they are audited.

Q.29. I find in this file what the stenographer has marked as Defendants' Exhibit 118. I wish you would look at that and tell me if you can whose handwriting that is. A. I think this is Mr. Haid's. I think it is.

Q.30. You think that is Mr. Haid's? A. This is— the original of that memorandum was shown to me on my return in connection with this initialing of that voucher.

Q.31. This is a photostat of a writing or memorandum there in your office out of your files. You think that is Mr. Haid's handwriting? A. I think so. I can't swear to it.

Q.32. It is not yours? A. No.

Q.33. Is it Mr. Dent's? A. No.

Q.34. Is it Mr. Dearborn's? A. It is not.

Mr. Berger: The original of that is in the hands of the United States Attorney?

Judge Henson: Yes.

The Special Master: Let me see what it is. (Said exhibit handed to the Special Master.)

Mr. Berger: We haven't the original. The United States Attorney has the original.

Judge Henson: I am willing to stipulate that the original is in the hands of the United States Attorney.

Mr. Berger: I understood you to say in his office.

A. Well, it was in our office.

Mr. Berger: Originally it was there, but it has been turned over to the United States Attorney.

A. That is right.

The Special Master: The nice thing about it is you cannot read it. That helps. That will shorten up my work.

Q.35. (By Judge Henson) I am showing you the part of this memorandum, Exhibit 118, appearing below March 24, 1936. Can you read that, Mr. Moore, for us?

The Special Master: If he can, you take it down, because I cannot read it.

Judge Henson: I offer in evidence Exhibit 118.

(Which said Defendants' Exhibit 118, so offered in evidence, having been previously duly marked, is in words and figures as follows:

[redacted] Compromise Deed passed on 7/1/35

50% direct to Companies - (tonnes)
20% to policy holders - paid by Consolidus
30 to Cl's Trust - R.I. Solomon a. Trustee

to pay Estate Expenses & Solrs. Attorneys
to Taxes Dept "
to [redacted] ety of Companies -
[redacted] to Companies when accounts
confirmed -

[redacted] sations of this balance -

[redacted] to be called
[redacted] Sanitable
[redacted]

A. This is check No. 22661, payable to C. R. Street, Agent, $2,450.74, charged to general legal expense in connection with the Missouri impounding. This check was handed to Mr. Paul Haid in the office here, 3-24-35.

Mr. Berger: Who received from Mr. Haid the attorneys' check for $5,391.63?

A. $5,391.63, which is 11 per cent out of the 30 per cent, something held—I can't read it.

The Special Master: You did very well.

Q.36. (By Judge Henson) Mr. Moore, do you recognize the handwriting? A. That is Mr. Dearborn's. He is the chief accountant.

Q.37. Do you know where Mr. Dearborn got the information from which he wrote this? A. Why, I think he got it from Mr. Haid, but that is just my thought. That memorandum, if I may explain, was made—Mr. Dent never had anything to do with it. His duties were underwriting the business, and the whole impounding from the beginning came under my supervision; what little we knew about it, I knew. He knew nothing. So during my absence, when Mr. Haid stopped there, the story given to me, when this thing was brought on, was that they asked Mr. Haid to make that memorandum so that they could explain to me what it was all about.

Q.38. Your insurance company is located in New York City? A. No, Philadelphia. As a matter of fact, it is located in Washington, but our operating offices are in Philadelphia.

Q.39. Did Mr. Haid visit your office and leave that? Did it come through the mails or how did you get it? A. He was there.

Q.40. What? A. I am simply telling you now what was told me. He was there and left it there at the request of Mr. Dent.

Q.41. Tell me whether or not it is your information that he left a 11 per cent check, that is a check for 11 per cent of your impoundment, payable out of the trustees' fund? A. That is what it says on the bottom there (indicating).

Q.42. All right. Do I understand that on the same date, you issued this check, Exhibit 117, payable to C. R. Street, Agent, that was issued at the same time you got the 11 per cent? A. That is the check that is described in that foot note, yes.

Q.43. Mr. Moore, what is your information as to what this check for $2,450.74 was for? A. Expenses,

nothing else. So far as I know, there was no other explanation.

Q.44. That is the only explanation you have ever had? A. Yes, sir.

Q.45. When this check was issued, you knew that 30 per cent of your impoundment was already up with trustees to pay expenses, didn't you? A. We knew that 30 per cent was being turned over to the trustees, presumably to cover expenses yes.

Q.46. Then why was this check given for expenses? A. I can't tell you. I have no information on that point whatever.

Q.47. Did you talk to Mr. Haid yourself or did he talk to Mr. Dent on the occasion of the visit? A. I wasn't back until several days after that. I wasn't there at all. I didn't talk to Mr. Haid.

Q.48. I notice this check was payable to C. R. Street, Agent. A. Yes, sir.

Q.49. Whose agent was he? A. I suppose he was our agent.

Q.50. That is what you intended when the check was given? A. I wasn't there. Now, I just—

The Special Master: He didn't write this check.

A. I am perfectly willing to assume responsibility for it. I am perfectly willing to answer any questions as to whether I would have issued the same if I had been there, if you want me to.

Q.51. Would you have issued it if you had been there? A. Yes, sir.

Q.52. Where would you have done it? A. Because I was told—because I would have been told, as Mr. Dent was told, by Mr. Haid that was the thing we were expected to do, and I would have done it, as we always did everything in that case, because we had implicit confidence in the men who handled it.

Judge Henson: I believe that is all.

Cross Examination by Mr. Bullitt.

XQ.53. You had implicit confidence in Mr. Street? A. Yes, sir, I can say and I would like to say that probably I have known Mr. Street longer than most of these men. I had my experience with him 43 years ago, and he rode over me as a youngster, just like he rode over everybody ever since, but I always admired him.

XQ.54. What kind of a man was Mr. Street? Describe his character and the way in which he treated

his business associates, and the people with whom he was dealing. A. Well, of course, my direct contact with him was in those years, probably '96 and '97. He was at that time assistant to Mr. Eugene Harbeck, who was the western manager of the Phoenix of Brooklyn, back in the ancient history days, and I was with the Ochen and Munich, a German company, and our offices were right underneath theirs, and in my position I had occasion to go up there probably two or three days a week trying to filch some information that they probably had about maps or some other things that we couldn't afford yet to have, and Charlie Street, as we all knew him, was a man that I talked to, and he would tell me I had a nerve to come up there trying to get information from them. He was just that kind of a dominating character that he never made me feel badly, although at the moment he was riding right over me. I never, outside of that—

Judge Henson (Interrupting): You never resisted him in your life or opposed him?

A. Oh, probably as a boy might. I tried to resist, but you might as well resist a stone wall.

Judge Henson: That was true when he got older?

A. So they say. I didn't know him so well and never had any conversation with him more than to say, "How do you do." I might see him at a convention or something.

Judge Henson: Just tell me, if you haven't, is Mr. Dent available?

A. Mr. Dent is on his vacation and has promised me that he would be in the office Saturday morning, so I could turn over what I had for him and go on mine Monday.

Judge Henson: He is available to us?

A. The first of the week, or as soon as possible so I can get away.

Judge Henson: All right. That is all.

The Special Master: Just let me ask you this question: As a matter of fact, you didn't issue this check but having received this information, as quick as you received it, based upon that information, you ratified what had been done?

A. Yes. It is hard to tell what you would have done, but I am certain if I had been there that day I

would have issued the check, and been perfectly satisfied that I was doing the proper thing.

The Special Master: Otherwise, you would have objected when you found out they had done it?

A. That was six days later.

The Special Master: No, you could have gotten back the check if you had insisted or thought it was wrong, but you didn't think it was?

A. That is right.

The Special Master: That is all.

(Witness excused.)